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NO. CAAP-21-0000418

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
MATTHAN PATTIOAY, Defendant-Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CR NO. 1PC161001676 (S.P.P. NO. 1PR101000015))

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Ginoza, Chief Judge, Leonard and Hiraoka, JJ.)

Upon review of the document filed in this court by self-represented Defendant-Appellant Matthan Pattioay (**Pattioay**), apparently challenging a judgment entered in circuit court criminal case number 1PC161001676, it appears that we lack appellate jurisdiction under Hawaii Revised Statutes (**HRS**) § 641-1(a) (2016) and Hawai'i Rules of Penal Procedure (**HRPP**) Rule 40(h) because there is no judgment in the record from which Pattioay can presently appeal.

On May 8, 2018, this court entered a Summary Disposition Order in CAAP-17-0000465 that affirmed a May 17, 2017 judgment (**Judgment**) in criminal case number 1PC161001676 against Pattioay for terroristic threatening in the first degree, in

violation of HRS § 707-716 (2014). On July 16, 2021, Pattioay filed a "Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody" (**7/16/21 Petition**) as to the Judgment with the Appellate Clerk's Office, which created this appeal, appellate court case number CAAP-21-0000418. The appellate clerk then forwarded the 7/16/21 Petition to the circuit court. In both cases, the clerks uploaded the 7/16/21 Petition into the Judiciary Electronic Filing System as a "notice of appeal" rather than an HRPP Rule 40 petition.

Under "HRPP [Rule] 40(h), appeals from proceedings for post-conviction relief may be made from a judgment entered in the proceeding and must be taken in accordance with Rule 4(b) of the Hawai'i Rules of Appellate Procedure (HRAP)." Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995) (internal quotation marks and brackets omitted). However, the circuit court has not entered any orders, much less a final judgment, on the 7/16/21 Petition. Absent a final order or judgment that is appealable under HRS 641-1(a), we lack appellate jurisdiction, and this appeal must be dismissed.

Pattioay's 7/16/21 Petition appears to be, in substance, a non-conforming petition for post-conviction relief from the May 17, 2017 Judgment, under HRPP Rule 40(c)(2), which provides:

(2) Nonconforming Petition. Where a post-conviction petition deviates from the form annexed to these rules, it shall nevertheless be accepted for filing and shall be treated as a petition under this rule provided that the petition (i) claims illegality of a judgment or illegality of "custody" or "restraint" arising out of judgment, (ii) is accompanied by the necessary filing fee or by a well-founded request to proceed without paying filing fees, and (iii) meets minimum standards of legibility and regularity.

When treating a nonconforming petition as a petition under this rule, the court shall promptly clarify by written order that the requirements of this rule apply and, if the information in the petition is incomplete, may require the petitioner to file a supplemental petition in the form annexed to these rules before requiring the state to respond.

(Emphasis added.) Under these circumstances, it is appropriate for the circuit court to adjudicate Pattioay's non-conforming HRPP Rule 40(c)(2) petition for post-conviction relief in a special proceeding.

Therefore, IT IS HEREBY ORDERED as follows:

1. CAAP-21-0000418 is dismissed for lack of appellate jurisdiction.

2. All motions in CAAP-21-0000418 are dismissed as moot.¹

3. Pattioay's 7/16/21 Petition filed in this court as a "notice of appeal" is deemed to be a non-conforming HRPP Rule 40(c)(2) petition for post-conviction relief from the May 17, 2017 Judgment of conviction, and thus, the Circuit Court of the First Circuit shall open a separate special proceeding for the purpose of adjudicating Pattioay's July 16, 2021 non-conforming HRPP Rule 40(c)(2) petition.

4. Upon entry of this order, the Appellate Court Clerk shall transmit copies of this order and Pattioay's 7/16/21 Petition filed in CAAP-21-0000418 to the Circuit Court of the First Circuit.

DATED: Honolulu, Hawai'i, January 7, 2022.

/s/ Lisa M. Ginoza
Chief Judge

/s/ Katherine G. Leonard
Associate Judge

/s/ Keith K. Hiraoka
Associate Judge

¹ If necessary, Pattioay may re-file a motion for leave to proceed *in forma pauperis* in the circuit court.