

NO. CAAP-21-0000716

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

FRANCISCO ALVARADO, JR., Petitioner-Appellant, v.
STATE OF HAWAII, Respondent-Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CASE NO. 1PR191000005; CR. NO. 1PC051001701)

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

Upon review of the record it appears that:

1. On April 16, 2020, the circuit court entered the order denying Petitioner-Appellant Francisco **Alvarado**, Jr.'s Hawai'i Rules of Penal Procedure (**HRPP**) Rule 40 **Petition** for Post-Conviction Relief that is the subject of this appeal;

2. The **Notice of Appeal** was mailed from **Saguaro** Correctional Center in Eloy, Arizona, and deemed filed on December 21, 2021, see Setala v. J.C. Penney, 97 Hawai'i 484, 40 P.3d 886 (2002);

3. Respondent-Appellee **State** of Hawai'i contested appellate jurisdiction on the grounds that Alvarado's notice of appeal was not filed within 30 days after entry of the order denying his HRPP Rule 40 Petition, as required by Hawai'i Rules of Appellate Procedure (**HRAP**) Rule 4(b)(1);

4. On July 6, 2020, this court issued an order to show cause about appellate jurisdiction (**OSC**);

5. Alvarado did not respond to the OSC and the deadline to respond (extended at Alvarado's request) has passed;

6. The failure to file a timely notice of appeal is a jurisdictional defect that a court has no discretion to disregard. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1129 (1986).

Therefore, IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

IT IS HEREBY FURTHER ORDERED that no further action will be taken on the July 6, 2022 Order to Show Cause.

DATED: Honolulu, Hawai'i, October 21, 2022.

/s/ Katherine G. Leonard
Presiding Judge

/s/ Keith K. Hiraoka
Associate Judge

/s/ Derrick H.M. Chan
Associate Judge