

**Electronically Filed
Intermediate Court of Appeals
CAOT-24-0000470
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NO. CAOT-24-0000470

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

TOBIUS DAVIES, Petitioner, v.
THE HONORABLE SHIRLEY M. KAWAMURA,
JUDGE OF THE CIRCUIT COURT OF THE FIRST CIRCUIT,
STATE OF HAWAI'I, Respondent Judge, and
STATE OF HAWAI'I, Respondent

ORDER DISMISSING APPEAL FOR LACK OF JURISDICTION

(By: Leonard, Acting Chief Judge, Hiraoka and Wadsworth, JJ.)

Upon review of the record in CAOT-24-0000470 and 1CPN-23-0000022,¹ it appears that we lack jurisdiction to grant the relief requested in self-represented Petitioner- Appellant Tobius Davies' (**Davies**) July 10, 2024 document, which the court construes as a petition for writ of mandamus, "Asking to Remove Judge Because My Due Process is Being Violated of No Court Hearing/Legal Counsel [sic] Release From Custody" (**Petition**).

Insofar as Davies contends, and the record indicates, that the Circuit Court of the First Circuit has not yet issued a final ruling in Davies' Hawai'i Rules of Penal Procedure (**HRPP**) Rule 40 proceeding in 1CPN-23-0000022, this court lacks appellate jurisdiction. See Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995) (dismissing appeal because "pursuant to [Hawai'i Rules of Appellate Procedure] Rule 4(b), an appeal from an order denying post-conviction relief must either be filed within thirty days after the entry of the order denying the HRPP Rule 40 petition or, in the alternative, after the announcement

¹ The court takes judicial notice of the record in 1CPN-23-0000022. Hawai'i Rules of Evidence Rule 201.

but before the entry of the order"); Hawaii Revised Statutes § 602-5(a)(3) (2016) (stating that only the Hawai'i Supreme Court has jurisdiction to issue an original writ directed to a court of inferior jurisdiction).

Therefore, IT IS HEREBY ORDERED that the appeal is dismissed for lack of jurisdiction, without prejudice to Davies seeking relief in the Hawai'i Supreme Court.

IT IS FURTHER ORDERED that all pending motions are dismissed.

DATED: Honolulu, Hawai'i, December 10, 2024.

/s/ Katherine G. Leonard
Acting Chief Judge

/s/ Keith K. Hiraoka
Associate Judge

/s/ Clyde J. Wadsworth
Associate Judge