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Intermediate Court of Appeals
CAAP-26-0000325
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NO. CAAP-26-0000325

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

EDWARD K. NAKAULA, JR., Petitioner-Appellant,
v.
STATE OF HAWAII, Respondent-Appellee.

APPEAL FROM THE FAMILY COURT OF THE FIRST CIRCUIT
(CASE NOS. 5CPN-25-0000003; 5FC940000011)

ORDER

(By: Nakasone, Chief Judge, Wadsworth and McCullen, JJ.)

Upon consideration of Respondent-Appellee State of Hawai'i's (**State**) September 4, 2026 Motion to Dismiss Appeal for Lack of Jurisdiction and Alternatively, to Strike Appellant's Opening Brief Filed August 14, 2026 (**Motion to Dismiss**), the papers in support, and the record, it appears that Petitioner-Appellant Edward K. Nakaula, Jr. (**Nakaula**) filed a self-

represented appeal from 5CPN-25-0000003,¹ which the State seeks to dismiss for lack of appellate jurisdiction. Alternatively, the State asks the court to strike Nakaula's August 14, 2026 self-represented Opening Brief for exceeding the page limit set forth in Hawai'i Rules of Appellate Procedure (**HRAP**) Rule 28(a).

Pursuant to Hawai'i Revised Statutes § 641-11 (2016) and Hawai'i Rules of Penal Procedure (**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 [HRAP]." Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995) (brackets omitted). Although HRPP Rule 40(h) refers to the appealable document as a "judgment," the Hawai'i Supreme Court has indicated that a "written order" deciding an HRPP Rule 40 petition for post-conviction relief is appealable pursuant to HRPP Rule 40(h). Id. at 14, 897 P.2d at 941.

The Circuit Court of the Fifth Circuit has not yet entered a decision on Nakaula's October 24, 2025 Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner for Custody. Accordingly, the appeal is premature, and the court lacks jurisdiction.

Therefore, IT IS HEREBY ORDERED that the Motion to Dismiss is granted in part and denied in part as follows:

1. The appeal is dismissed.
2. All other relief requested is denied as unnecessary.

IT IS FURTHER ORDERED that all pending motions are dismissed.

¹ Nakaula does not identify the order from which he appeals. Though Nakaula is represented by counsel Mark Zenger, he filed the appeal self-represented.

IT IS FURTHER ORDERED that a copy of this order shall be mailed to Nakaula at the return address on the envelope attached to his notice of appeal.

DATED: Honolulu, Hawai'i, September 28, 2026.

/s/ Karen T. Nakasone
Chief Judge

/s/ Clyde J. Wadsworth
Associate Judge

/s/ Sonja M.P. McCullen
Associate Judge