

NOT FOR PUBLICATION

NO. 24981

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
LARRY RUTKOWSKI, Defendant-Appellant, and
EDUARDO ARTIENDA LEONES, aka EDDIE, Defendant

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Cr. No. 92-1595)

ORDER DISMISSING APPEAL
FOR LACK OF APPELLATE JURISDICTION
(By: Burns, C.J., Watanabe, and Lim, JJ.)

Defendant-Appellant Larry Rutkowski (Defendant) appeals from the "Findings of Fact, Conclusions of Law, and Order Denying [Defendant's] Amended Motion to Withdraw Guilty Plea" entered on February 13, 2002 (February 13, 2002 Order) by the Circuit Court of the First Circuit (the circuit court), Judge Wilfred K. Watanabe presiding.

The record reveals that Defendant was indicted on June 10, 1992 and charged with committing the offense of Promoting a Dangerous Drug in the First Degree, in violation of Hawaii Revised Statutes § 712-1241(1)(b)(ii)(A) (1985 & Supp. 1992). Pursuant to a plea agreement, Defendant pled guilty to the charged offense on July 26, 1994. Thereafter, by a Judgment entered on April 17, 1996, the circuit court sentenced Defendant to ten years' probation, with the special condition that Defendant serve one year in jail.

On May 21, 2001, following Defendant's conviction in federal court of two drug offenses, Plaintiff-Appellee State of

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Hawai'i (the State) moved to revoke Defendant's probation, resentence Defendant, and issue a bench warrant for Defendant's arrest. On December 20, 2001, Defendant filed an Amended Motion to Withdraw Guilty Plea, which was denied by the circuit court in its February 13, 2002 Order.

In State v. Johnson, 96 Hawai'i 462, 468-70, 32 P.3d 106, 112-14 (App. 2001), application for cert. dismissed (Oct. 8, 2001), this court held that an order denying a defendant's motion to withdraw a no-contest plea is not an appealable "final order" or an immediately appealable collateral order if a motion to revoke probation is still pending in the same case. Since it appears from the record that the probation revocation proceedings instituted by the State against Defendant are still pending, we conclude, in light of Johnson, that we lack appellate jurisdiction to consider this appeal. Accordingly,

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

DATED: Honolulu, Hawai'i, July 30, 2003.

Chief Judge

Associate Judge

Associate Judge