

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 27901

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

GENARO GUALDARAMA, Petitioner-Appellant,
v.
STATE OF HAWAI'I, Respondent-Appellee,

KHAMAKADO
CLERK APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(S.P.P. No. 05-1-0053)
(Cr. No. 99-2484)

ORDER DISMISSING APPEAL

(By: Burns, C.J., Lim and Foley, JJ.)

Upon review of the record, it appears that the circuit court's October 28, 2005 "Order Denying Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody" pursuant to Rule 40 of the Hawai'i Rules of Penal Procedure (HRPP) was appealable by filing a notice of appeal with the circuit court within thirty days after entry of the October 28, 2005 order. See HRPP Rule 40(h); Rule 4(b)(1) of the Hawai'i Rules of Appellate Procedure (HRAP). Petitioner-Appellant Genaro Gualdarama (Appellant Gualdarama) filed his April 24, 2006 notice of appeal more than thirty days after entry of the October 28, 2005 order, and, thus, Appellant Gualdarama's appeal is not timely. There is no evidence in the record that Appellant Gualdarama tendered his April 24, 2006 notice of appeal to prison officials for forwarding to the court clerk within thirty days

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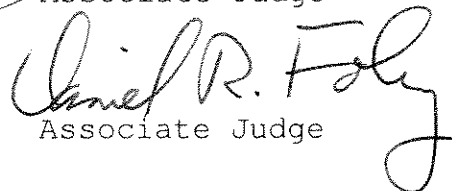
after entry of the October 28, 2005. Our recognized exceptions to the requirement for a timely notice of appeal do not apply to this case. "As a general rule, compliance with the requirement of the timely filing of a notice of appeal is jurisdictional, . . . and we must dismiss an appeal on our motion if we lack jurisdiction." Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995) (citations, internal quotation marks, and brackets omitted); HRAP Rule 26(b) ("[N]o court or judge or justice is authorized to change the jurisdictional requirements contained in Rule 4 of these rules."). Therefore,

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

DATED: Honolulu, Hawai'i, July 14, 2006.


Chief Judge


Associate Judge


Associate Judge