

NO. 28397

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
BRO. GRACE AMEN, Defendant-Appellant

E.M. RIMANDO
HON. APPELLATE COURTS
STATE OF HAWAII

2007 APR -5 AM 7:49

FILED

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT,
HONOLULU DIVISION
(HPD Traffic No. 1DTI-06-101054)

ORDER DISMISSING APPEAL

(By: Watanabe, Presiding J., Lim and Foley, JJ.)

Upon review of the record, it appears that we do not have jurisdiction over Defendant-Appellant Bro. Grace Amen's (Appellant Amen) appeal from the October 19, 2006 judgment (the Judgment) against Appellant Amen for noncompliance with the speed limit in violation of Hawaii Revised Statutes (HRS) § 291C-102 (Supp. 2006).

"An appellate court has . . . an independent obligation to ensure jurisdiction over each case and to dismiss the appeal *sua sponte* if a jurisdictional defect exists. State v. Graybeard, 93 Hawai'i 513, 516, 6 P.3d 385, 388 (App. 2000).

"Appeals from the district court, in criminal cases, are authorized by HRS § 641-12, which . . . provides in pertinent part that appeals upon the record shall be allowed from all *final decisions and final judgments* of district courts in all criminal matters." State v. Ontiveros, 82 Hawai'i 446, 449, 923 P.2d 388,

391 (1996) (internal quotation marks and brackets omitted). Noncompliance with the speed limit in violation of HRS § 291C-102 is punishable by only a fine, and, thus, this offense constitutes a "'[t]raffic infraction' . . . for which the prescribed penalties do not include imprisonment." HRS § 291D-2 (1993) (emphasis added). "No traffic infraction shall be classified as a criminal offense." HRS § 291D-3(a) (Supp. 2006). Under HRS chapter 291D, traffic citations may be contested either by submission of a written statement to a district court or by appearing at a hearing requested before a district court. If a written statement or contested hearing results in a judgment in favor of Plaintiff-Appellee State of Hawai'i, the defendant may request a trial before the district court that the district court conducts "pursuant to the rules of penal procedure and rules of the district court[.]" HRS § 291D-13(a) (Supp. 2006). Rule 19(d) of the Hawai'i Civil Traffic Rules (HCTR) provides that "[a]ppeals from judgments entered after a trial may be taken in the manner provided for appeals from district court civil judgments." HCTR Rule 19(d) (emphasis added). Appeals from district court civil judgments are authorized by HRS § 641-1(a) (Supp. 2006).

Pursuant to HRS § 641-1(a) (1993), appeals are allowed in civil matters from all final judgments, orders, or decrees of circuit and district courts. In district court cases, a judgment includes any order from which an appeal lies. A final order means an order ending the proceeding, leaving nothing further to be accomplished. When a written judgment, order, or decree ends the litigation by fully

deciding all rights and liabilities of all parties, leaving nothing further to be adjudicated, the judgment, order, or decree is final and appealable.

Casumpang v. ILWU, Local 142, 91 Hawai'i 425, 426, 984 P.2d 1251, 1252 (1999) (citations, internal quotation marks, and footnote omitted).

The Judgment ended the proceeding for Appellant Amen's citation for noncompliance with the speed limit in violation of HRS § 291C-102, leaving nothing further to be accomplished, because the Judgment entered a final judgment against Appellant Amen for noncompliance with the speed limit in violation of HRS § 291C-102, and imposed a fine of \$75.00. Therefore, the Judgment is an appealable final judgment under HRS § 641-1(a) (Supp. 2006).

The judgment subsequently entered on January 3, 2007 was superfluous and is therefore, not an appealable final judgment under HRS § 641-1(a).

Appellant Amen's appeal from the Judgment is not timely because Appellant Amen did not file his January 26, 2007 notice of appeal within thirty days after entry of the Judgment, as Rule 4 of the Hawai'i Rules of Appellate Procedure required. "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 . . . if we lack jurisdiction." Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995) (citations,

internal quotation marks, and original brackets omitted). "In criminal cases, [the Hawai'i Supreme Court] ha[s] made exceptions to the requirement that notices of appeal be timely filed."

State v. Irvine, 88 Hawai'i 404, 407, 967 P.2d 236, 239 (1998).

The "recognized exceptions involve circumstances where:

(1) defense counsel has inexcusably or ineffectively failed to pursue a defendant's appeal from a criminal conviction in the first instance; or (2) the trial court's decision was unannounced and no notice of the entry of judgment was ever provided[.]" Id. (citations omitted). Neither exception applies to Appellant Amen; thus, we lack jurisdiction over this untimely appeal.

Therefore,

IT IS HEREBY ORDERED that the appeal is dismissed.

DATED: Honolulu, Hawai'i, April 5, 2007.

Corinne K. Watanabe
Presiding Judge


Associate Judge

David R. Foley
Associate Judge