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Intermediate Court of Appeals
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NO. CAAP-15-0000963

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee, v.
ANTONIO J. VILLEGAS, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
(CASE NO. 3DTA-14-02739)

ORDER

(1) GRANTING THE MAY 20, 2016 DISMISSAL OF APPEAL;

AND

(2) DENYING AS UNNECESSARY THE MAY 9, 2016 MOTION TO DISMISS

(By: Foley, Presiding Judge, Reifurth and Ginoza, JJ.)

Upon review of Plaintiff-Appellee State of Hawaii's (the State's) May 9, 2016 "Motion to Dismiss for [Defendant-Appellant Antonio J. Villegas's (Appellant's)] Failure to Comply with Hawaii Rules of Appellate Procedure [(HRAP)]," and Appellant's May 20, 2016 "Declaration of Ronald G. Self Re: Dismissal," which the court construes as a motion to dismiss the appeal, the papers in support and the record, and noting no opposition, it appears that:

(1) The State moves to dismiss the appeal on the ground that Appellant defaulted on the opening brief.

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

(2) Appellant seeks to dismiss the appeal on the ground that he cannot afford transcripts.

(3) Appellant has not filed a motion for a payment or waiver of transcript fees, under Hawaii Revised Statutes § 802-7 (Repl. 2014), in this court. See Arnold v. Higa, 61 Haw. 203, 205, 600 P.2d 1383, 1385 (1979).

(4) Attached to Appellant's motion to dismiss the appeal is a May 16, 2016 declaration by Appellant that reflects his understanding of the consequences of dismissal and that he withdraws the appeal voluntarily. See HRAP Rule 42(c).

(5) Appellant's declaration does not indicate whether he is aware that he may move for payment or waiver of transcript fees under HRS § 802-7.

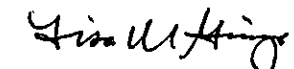
Therefore, IT IS HEREBY ORDERED that Appellant's motion to dismiss the appeal is granted, and the appeal is dismissed. However, pursuant to HRAP Rule 40, Appellant may timely move for reconsideration should he seek to file a motion under HRS § 802-7.

IT IS HEREBY FURTHER ORDERED that the State's motion to dismiss the appeal is denied as unnecessary.

DATED: Honolulu, Hawai'i, June 8, 2016.


Christie R. Foley
Presiding Judge


Lawrence M. Reipke
Associate Judge


Tim A. King
Associate Judge