

NO. 24984

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

MICHAEL KIRK, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 01-1-1044)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.)

Upon review of the statements supporting and contesting jurisdiction and the record, it appears that: (1) the January 7, 2002 order denying appellant's motion to dismiss indictment is not appealable under HRS §§ 641-11 or 641-17 inasmuch as judgment has not been entered in Criminal No. 01-1-1044 and interlocutory certification was denied; (2) the January 7, 2002 order does not meet the requirements of the collateral order exception to the final judgment rule inasmuch as HRPP 6(d) does not guarantee that trial will not occur if the rule is violated, the alleged violation of HRPP 6(d) is not a fundamental defect in the grand jury proceeding that caused the grand jury no longer to be a grand jury or the indictment no longer to be an indictment and the alleged violation of HRPP 6(d) involves considerations enmeshed in the merits of the case; see Midland Asphalt Corp. v. United States, 489 U.S. 794, 800-02 (1989); (3) the January 7, 2002 order is not appealable under the harmless error rule of

United States v. Mechanik, 475 U.S. 66 (1986) inasmuch as the rule applies only to technical violations of Rule 6(d) that do not question the fundamental fairness of the grand jury proceeding; and thus (4) the appeal of the January 7, 2002 order is premature and we lack jurisdiction. Therefore,

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

DATED: Honolulu, Hawai'i, June 21, 2002.