

NO. 25077

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

RONALD MENDOZA, Defendant-Appellee

APPEAL FROM THE DISTRICT COURT OF THE FIFTH CIRCUIT
(CASE NO. 00-11-7007K)

ORDER DISMISSING APPEAL

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

Upon review of the record, it appears that we do not have jurisdiction over the appeal by Plaintiff-Appellant State of Hawai'i (Appellant State). "As a general rule, compliance with the requirement of timely filing of a notice of appeal is jurisdictional, and we must dismiss an appeal on our motion if we lack jurisdiction." State v. Knight, 80 Hawai'i 318, 323, 909 P.2d 1133, 1137 (1996) (citation and internal quotation marks omitted). Rule 4(b)(1) of the Hawai'i Rules of Appellate Procedure (HRAP) required that the State's "notice of appeal shall be filed in the . . . district . . . court within 30 days after the entry of the . . . order appealed from." (Emphasis added). "A judgment or order is entered within the meaning of this subsection when it is filed with the clerk of the court." HRAP Rule 4(b)(3). The State failed to file its April 30, 2002 notice of appeal within thirty days after the entry of the order appealed from, namely the March 4, 2002 "Findings of Fact;

Conclusions of Law; Order Granting Defendant's Motion to Suppress Evidence Filed on November 2, 2001," as HRAP Rule 4(b)(1) required.

Although Appellant State asserts that the clerk of the district court did not serve Appellant State with the March 4, 2002 order until after the thirty-day period under HRAP Rule 4(b)(1) had lapsed, the date of service is irrelevant under HRAP Rule 4(b)(1). Furthermore, Rule 49(e)(3) of the Hawai'i Rules of Penal Procedure provides that the "[l]ack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted by Rule 4(b) of the Hawai'i Rules of Appellate Procedure." Appellant State neither sought nor obtained an extension of the thirty-day period for filing its notice of appeal pursuant to HRAP Rule 4(b)(5).

"In criminal cases, we have 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). One of the "recognized exceptions involve[s] circumstances where . . . the trial court's decision was unannounced and no notice of the entry of judgment was ever provided[.]" Id. (citations omitted) (emphasis added); see, e.g., State v. Ferreira, 59 Haw. 255, 257-58, 580 P.2d 63, 65 (1978) ("We agree that the unusual case may

exist under the Hawaii Rules of Penal Procedure . . . in which the neglect of the court clerk to give notice of the entry of a judgment or order should not operate to deprive a defendant of his appeal."). However, this exception does not apply to the State because the record unequivocally shows that on December 5, 2001, the district court announced its decision to grant Appellee Ronald Mendoza's motion to suppress evidence. Therefore, Appellant State's appeal is untimely, and we lack jurisdiction over this appeal. Accordingly,

IT IS HEREBY ORDERED that Appellant State's appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, August 12, 2002.