

*** NOT FOR PUBLICATION ***

NO. 26727

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

EDWARD GAGARIN, Petitioner-Appellant

vs.

STATE OF HAWAI'I, Respondent-Appellee

EM. RIMANDO
HON. APPELLATE COURTS
STATE OF HAWAI'I

2005 OCT 13 AM 9:15

FILED

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P.P. NO. 04-1-0010)

ORDER DISMISSING APPEAL

(By: Nakayama, J., for the court¹)

Upon review of the record, it appears that the circuit court's June 22, 2004 order denying appellant's HRPP Rule 40 petition for post-conviction relief was appealable by notice of appeal filed with the circuit court within thirty days after the order was entered. See HRPP 40(h); HRAP 4(b)(1). Appellant's notice of appeal was filed with the circuit court on July 27, 2004, thirty-four days after entry of the June 22, 2004 order and was untimely. There is no evidence in the record that the notice of appeal was tendered to prison officials for forwarding to the court clerk on or before the thirty-day appeal deadline. Our recognized exceptions to the requirement that notices of appeal be timely filed do not apply in this case. Thus, we lack jurisdiction. See Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995) ("[C]ompliance with the requirement of the timely filing of a notice of appeal is jurisdictional, and we

¹Considered by: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.

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must dismiss an appeal on our own motion if we lack jurisdiction."). Therefore,

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

DATED: Honolulu, Hawai'i, October 13, 2005.

FOR THE COURT:

Hanni C. TAYLOR

Associate Justice