

**Electronically Filed
Supreme Court
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NO. SCWC-11-0000602

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Respondent/Plaintiff-Appellee,

vs.

MARIA T. TIMMONS, Petitioner/Defendant-Appellant.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(ICA NO. CAAP-11-0000602; CASE NO. 1DTA-10-04522)

ORDER ACCEPTING APPLICATION FOR WRIT OF CERTIORARI,
VACATING ICA ORDER DISMISSING APPEAL FOR
LACK OF JURISDICTION, AND REMANDING APPEAL TO ICA

(By: Recktenwald, C.J., Nakayama, Acoba, and McKenna, JJ. and
Circuit Judge Crandall, in place of Duffy, J., recused)

Petitioner/defendant-appellant Maria T. Timmons filed a timely application for writ of certiorari on March 5, 2012 to review the intermediate court of appeals' (ICA) January 4, 2012 Order Dismissing Appeal for Lack of Appellate Jurisdiction. Timmons appealed the district court's August 2, 2011 order dismissing without prejudice Case No. 1DTA-10-04522. The ICA concluded that the August 2, 2011 order was not a final decision appealable pursuant to HRS § 641-12 (Supp. 2011) because the order dismissing without prejudice is not "a decision on the merits and does not include a sentence," citing State v. Valiani, 57 Haw. 133, 134, 532 P.2d 75, 76 (1976), United States v. Tsoie,

966 F.2d 1357, 1359 (10th Cir. 1992), and State v. Kilborn, 109 Hawai'i 435, 442, 127 P.3d 95 102 (App. 2005).

HRS § 641-12 authorizes appeals from "all final decisions and final judgments of district courts in criminal matters." District court Case No. 1DTA-10-04522 was dismissed by the district court, without prejudice, by order of August 2, 2011, for failure to commence trial within the six-month period prescribed by HRPP Rule 48. The August 2, 2011 order terminated the proceedings in Case No. 1DTA-10-04522. Cf. State v. Kalani, 87 Hawai'i 260, 261-62, 953 P.2d 1358, 1359-60 (1998) (finding jurisdiction to consider an appeal brought by prosecution under HRS § 641-13(1), since "a dismissal without prejudice is a final order -- it terminates the current case") (emphasis in original)). It is the final decision of the district court that is appealable by petitioner pursuant to HRS § 641-12. The ICA's reliance on Valiani, Tsoie and Kilborn was misplaced.

Petitioner's application for writ of certiorari is accepted. The ICA's January 4, 2012 Order Dismissing Appeal for Lack of Appellate Jurisdiction is vacated. Petitioner's appeal is remanded to the ICA for disposition.

DATED: Honolulu, Hawai'i, April 11, 2012.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ Sabrina S. McKenna

/s/ Virginia L. Crandall

