

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 28026

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
CHRIS GRINDLING, Defendant-Appellant

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE CIRCUIT COURT OF THE SECOND CIRCUIT
(CR. NO. 98-0325(2))

ORDER DISMISSING APPEAL

(By: Burns, C.J., Lim and Foley, JJ.)

Upon review of the record, it appears that we do not have jurisdiction over Defendant-Appellant Chris Grindling's (Appellant Grindling) appeal from the Honorable Shackley F. Rafetto's June 13, 2006 "Order Denying Defendant's Various Motions" because the June 13, 2006 order is not an appealable judgment under HRS § 641-11 (Supp. 2005).

"The right of appeal in a criminal case is purely statutory and exists only when given by some constitutional or statutory provision." State v. Poochina, 97 Hawai'i 505, 509, 40 P.3d 907, 911 (2002) (citation and internal quotation marks omitted). "In a circuit court criminal case, a defendant may appeal from the judgment of the circuit court, see HRS § 641-11 (1993), from a certified interlocutory order, see HRS § 641-17 (1993), or from an interlocutory order denying a motion to dismiss based on double jeopardy." State v. Kealaiki, 95 Hawai'i 309, 312, 22 P.3d 588, 591 (2001) (citation omitted). The

June 13, 2006 order is neither certified for an appeal pursuant to HRS § 641-17 (Supp. 2005) nor is the June 13, 2006 order an order that denied a motion to dismiss based on double jeopardy. Therefore, the June 13, 2006 order is appealable only if it qualifies as a judgment under HRS § 641-11 (Supp. 2005).

"Any party aggrieved by the judgment of a circuit court in a criminal matter may appeal to the intermediate appellate court, subject to chapter 602, in the manner and within the time provided by the rules of court." HRS § 641-11 (Supp. 2005). As the supreme court has explained, "the sentence of the court in a criminal case is the judgment from which an appeal is authorized, and where there is no conviction and sentence, there can be no appeal under HRS § 641-11." State v. Baxley, 102 Hawai'i 130, 139-40, 73 P.3d 668, 677-78 (2003) (citation, internal quotation marks, original brackets, and ellipsis points omitted). The June 13, 2006 order did not impose a sentence, but rather, the June 13, 2006 order is an interlocutory order that denied the following four motions:

- (1) Appellant Grindling's December 19, 2005 motion to disqualify the judge;
- (2) Appellant Grindling's December 21, 2005 motion to declare that Grindling's prison-discharge date was moot;
- (3) Appellant Grindling's two January 17, 2006 motion for reconsideration of a prior order; and
- (4) Appellant Grindling's May 8, 2006 motion for a hearing date.

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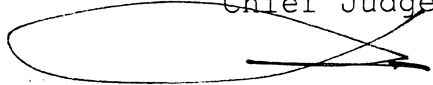
"[U]nder the collateral order exception, an interlocutory order is appealable if it: (1) fully disposes of the question at issue; (2) resolves an issue completely collateral to the merits of the case; and (3) involves important rights which would be irreparably lost if review had to await a final judgment." State v. Ontiveros, 82 Hawai'i 446, 450, 923 P.2d 388, 392 (1996) (citations and internal block quote format omitted).

"Generally," however, "the collateral order exception is applicable in criminal cases only upon a denial of pretrial motions to reduce bail, motions to dismiss based on double jeopardy grounds, and motions to dismiss under the Speech and Debate Clause." State v. Johnson, 96 Hawai'i 462, 470 n.12, 32 P.3d 106, 114 n.12 (App. 2001). The June 13, 2006 order does not satisfy all three of the requirements for the collateral order exception. Therefore, the June 13, 2006 order is not appealable under HRS § 641-11 (Supp. 2005) and we lack jurisdiction over this appeal. Accordingly,

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

DATED: Honolulu, Hawai'i, November 13, 2006.


Chief Judge



Associate Judge

Associate Judge