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Intermediate Court of Appeals
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NO. CAAP-21-0000430

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

SALDY MARZAN, Petitioner-Appellant, v.
STATE OF HAWAII, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(SPP NO. 1CPN-21-0000018)

ORDER GRANTING MOTION TO DISMISS APPEAL

(By: Nakasone, Presiding Judge, Leonard and Hiraoka, JJ.)

Upon consideration of Respondent-Appellee State of Hawaii's September 15, 2021 Motion to Dismiss for Lack of Appellate Jurisdiction, the papers in support, the record, and there being no opposition, it appears that we lack jurisdiction over self-represented Petitioner-Appellant Saldy Marzan's (**Marzan**) appeal, which is premature.

Marzan states that he appeals from "an order denying/dismissing his Rule 40 Petition under SPP No. 1CPN-210000018 Filed in this court on 3-14-2021," by the Circuit Court of the First Circuit (**circuit court**). However, no such order appears in the record.

"The right of appeal in a criminal case is purely statutory and exists only when given by some constitutional or statutory provision." State v. Poohina, 97 Hawai'i 505, 509, 40 P.3d 907, 911 (2002) (citation and internal quotation marks omitted). Pursuant to Hawaii Revised Statutes § 641-11 (2016) and "HRPP [Hawai'i Rules of Penal Procedure] [Rule] 40(h), appeals from proceedings for post-conviction relief may be made from a judgment entered in the proceeding[.]" Grattafiori v.

State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995) (internal quotation marks and brackets omitted).

Here, on March 14, 2021, in the underlying case, 1CPN-21-0000018, the circuit court clerk electronically filed Marzan's Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody, under HRPP Rule 40 (**Petition**). The circuit court has not issued an order or judgment disposing of the Petition, and there is no circuit court ruling that could be the subject of the appeal.

Therefore, IT IS HEREBY ORDERED that the motion to dismiss the appeal is granted, and the appeal is dismissed.

IT IS FURTHER ORDERED that all pending motions are dismissed.

DATED: Honolulu, Hawai'i, October 12, 2021.

/s/ Karen T. Nakasone
Presiding Judge

/s/ Katherine G. Leonard
Associate Judge

/s/ Keith K. Hiraoka
Associate Judge