

**Electronically Filed
Intermediate Court of Appeals
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NO. CAAP-22-0000032

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

STATE OF HAWAI'I, Plaintiff-Appellee, v.
ROBERTA WILBORN, Defendant-Appellant.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CRIMINAL NO. 1CPC-19-0000658)

ORDER GRANTING IN PART MOTION TO DISMISS
FOR LACK OF APPELLATE JURISDICTION

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

Upon consideration of the Motion to Dismiss for Lack of Appellate Jurisdiction (**Motion**), filed by Plaintiff-Appellee State of Hawai'i, on April 11, 2022, the papers in support, and the record, it appears that we lack jurisdiction over Defendant-Appellant Roberta Wilborn's (**Wilborn**) appeal from Case No. 1CPC-19-0000658 because the Circuit Court of the First Circuit (**circuit court**) has not entered a final, appealable order or judgment and the appeal is premature.

Wilborn appears to appeal from the circuit court's September 22, 2021 Order Granting Motion for Mental Examination to Determine [Wilborn]'s Fitness to Proceed and Penal Responsibility. The circuit court did not certify the order for interlocutory appeal.

"It is well-settled that the right to appeal is purely statutory and exists only when given by some constitutional or statutory provision." Burke v. Cty. of Maui, 95 Hawai'i 288, 289, 22 P.3d 84, 85 (2001). There is no statutory right to appeal under Hawaii Revised Statutes chapter 704 when a defendant

is ordered to undergo an evaluation to determine fitness to proceed or penal responsibility. There is no appealable order or final judgment in the record on appeal. Therefore, this court lacks appellate jurisdiction.

Further, Nelson W. Goo, Wilborn's court-appointed counsel, whom the circuit court did not appoint as standby counsel, has not withdrawn or been discharged from representing Wilborn. See State v. Hirano, 8 Haw. App. 330, 333-36, 802 P.2d 482, 484-85 (1990). Therefore, Wilborn improperly filed the notice of appeal self-represented.

IT IS HEREBY FURTHER ORDERED that the Motion is granted in part and the appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, June 6, 2022.

/s/ Keith K. Hiraoka
Presiding Judge

/s/ Clyde J. Wadsworth
Associate Judge

/s/ Karen T. Nakasone
Associate Judge