

NO. 24915

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

STEVEN LEE FISHER, Defendant-Appellant

APPEAL FROM THE THIRD CIRCUIT COURT
(CR. NO. 6561)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.)

Upon review of the record, it appears we do not have jurisdiction over Defendant-Appellant Steven Lee Fisher's (Appellant Fisher), appeal from the July 20, 2001 order denying his post-conviction motion for correction of illegal sentence pursuant to Rule 35 of the Hawai'i Rules of Penal Procedure (HRPP). "As a general rule, compliance with the requirement of timely filing of a notice of appeal is jurisdictional, and we must dismiss an appeal on our motion if we lack jurisdiction." State v. Knight, 80 Hawai'i 318, 323, 909 P.2d 1133, 1138 (1996) (citation and internal quotation marks omitted). Rule 4(b) of the Hawai'i Rules of Appellate Procedure (HRAP) required Appellant Fisher, pro se, to file his notice of appeal within thirty days after entry of the July 20, 2001 order denying his post-conviction motion for correction of illegal sentence. The file-stamped date on Appellant Fisher's notice of appeal is February 15, 2002. However, "a notice of appeal is deemed filed

for purposes of [HRAP] Rule 4(a) on the day it is tendered to prison officials by a pro se prisoner.” Setala v. J.C. Penney Company, 97 Hawai‘i 484, 485, 40 P.3d 886, 897 (2002) (internal quotation marks omitted).¹ Pursuant to our May 31, 2002 order for temporary remand, the Circuit Court of the Third Circuit, State of Hawai‘i, reviewed this factual issue and concluded that Appellant Fisher gave his notice of appeal to prison officials at the Florence Correctional Center in Florence, Arizona, on February 11, 2002. February 11, 2002, was not within thirty days after entry of the July 20, 2001 order denying his post-conviction motion for correction of illegal sentence, as HRAP Rule 4(b) required.

“In criminal cases, we have made exceptions to the requirement that notices of appeal be timely filed.” State v. Irvine, 88 Hawai‘i 404, 407, 967 P.2d 236, 239 (1998). “Our recognized exceptions involve circumstances where: (1) defense counsel has inexcusably or ineffectively failed to pursue a defendant’s appeal from a criminal conviction in the first instance[,] . . . or (2) the trial court’s decision was unannounced and no notice of the entry of judgment was ever provided[.]” Id. (citations omitted). Appellant Fisher does not

¹ Although we adopted the rule in Houston v. Lack, 487 U.S. 266 (1988), in a civil case, “state courts have . . . adopted the mailbox rule in both civil and criminal cases.” Setala v. J.C. Penney Company, 97 Hawai‘i 484, 488, 40 P.3d 886, 890 (2002) (internal quotation marks omitted). Thus, this rule also applies to a pro se criminal defendant who appeals under Rule 4(b) of the Hawai‘i Rules of Appellate Procedure.

qualify for either of these two possible exceptions because (1) this appeal is not an appeal directly from Appellant Fisher's conviction, and (2) the record shows that the circuit court announced its decision through entry of the July 20, 2001 order, and on July 20, 2001, the circuit court sent a notice of entry of the July 20, 2001 order to Appellant Fisher's attorney at that time, Deputy Public Defender Dale K. Mattice. Therefore, Appellant Fisher's appeal is untimely, and we lack jurisdiction over this appeal. Accordingly,

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

DATED: Honolulu, Hawai'i, December 23, 2002.