

NO. 26020

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

ROBERT LEE TETU, Defendant-Appellant

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 02-1-1456)

ORDER DENYING DEFENDANT-APPELLANT
ROBERT TETU'S MOTION TO DISMISS APPEAL
(By: Duffy, J. for the court¹)

Upon consideration of the motion to dismiss the appeal of Defendant-Appellant Robert Tetu filed by court-appointed counsel Jacob Merrill, the papers in support, and the records and files herein, it appears that: (1) on August 11, 2003, Defendant-Appellant Robert Tetu filed a notice of appeal in this case; (2) counsel now moves for dismissal because he believes Tetu no longer wishes to pursue the appeal; (3) counsel lists Cr. No. 02-1-1091 as the underlying criminal number for this appeal, but that it not the criminal case that is the subject of this appeal; (4) this appeal stems from a conviction and sentence entered in Cr. No. 02-1-1456; (5) there is no declaration of Tetu in support of dismissal and counsel's declaration that he made one phone call to locate Tetu after Tetu missed a meeting does

¹ Considered by: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.

not demonstrate that he made a diligent effort to locate Tetu to determine whether Tetu wants to pursue this appeal. Therefore,

IT IS HEREBY ORDERED that the motion to dismiss the appeal is denied. This denial is without prejudice to a subsequent motion that contains the correct caption and criminal number, and includes an affidavit or declaration of Tetu that complies with HRAP Rule 42(c) or, if Tetu cannot be located, a declaration of counsel that indicates counsel made a diligent effort to locate Tetu.

DATED: Honolulu, Hawai'i, April 27, 2004.

Jacob M. Merrill
for defendant-appellant
on the motion

FOR THE COURT:

Associate Justice