

*** NOT FOR PUBLICATION ***

NO. 26599

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

PETER B. MUNOZ, Petitioner-Appellant

vs.

STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE SECOND CIRCUIT COURT
(S.P.P. NO. 89-0005)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, and Duffy, JJ.
and Acoba, J. concurring separately)

Upon review of the record, it appears that appellant appeals the circuit court's May 21, 2004 order denying a motion to expunge court records filed in HRPP Rule 40 proceeding SPP 89-0005. HRPP Rule 40(h) authorized appellant to appeal pursuant to HRS § 641-11 from the June 25, 1990 judgment disposing of the HRPP Rule 40 petition, but does not authorize appellant to appeal from the May 21, 2004 order denying the motion to expunge court records. The May 21, 2004 order is not otherwise appealable pursuant to HRS § 641-11, which authorizes an appeal only from a judgment of conviction and sentence. Thus, we lack jurisdiction over this appeal. See Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995) ("The right of appeal in a criminal case is purely statutory and exists only when given by some constitutional or statutory provision."). Therefore,

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

DATED: Honolulu, Hawai'i, September 21, 2004.

I concur in the result.