

*** NOT FOR PUBLICATION ***

NO. 26988

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

JOSEPH CHESTER BROWN, Petitioner-Appellant

vs.

STATE OF HAWAI'I, Respondent-Appellee

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAII

2005 MAR 22 PM 2:13

FILED

APPEAL FROM THE FIRST CIRCUIT COURT
(S.P.P. NO. 04-1-0062)ORDER DISMISSING APPEAL

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

Upon review of the statements supporting and contesting jurisdiction and the record, it appears that the circuit court's October 7, 2004 order denying appellant's HRPP Rule 40 petition for post-conviction relief was appealable by notice of appeal filed within thirty days after the order was entered. See HRPP 40(h); HRAP 4(b)(1). Appellant's notice of appeal was filed on December 8, 2004, sixty-two days after entry of the October 7, 2004 order and is untimely. Appellant did not obtain an extension of time to appeal from the circuit court pursuant to HRAP 4(b)(5) and our recognized exceptions to the requirement that notices of appeal be timely filed do not apply in this case. Thus, we lack jurisdiction. See Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995) ("[C]ompliance with the requirement of the timely filing of a notice of appeal is jurisdictional, and we must dismiss an appeal on our own motion if we lack jurisdiction."). Therefore,

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

DATED: Honolulu, Hawai'i, March 22, 2005.

Steven H. ...

Punaia A. ...

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