

*** NOT FOR PUBLICATION ***

NO. 27284

IN THE SUPREME COURT OF THE STATE OF HAWAII

ROGELIO L. GANOTISI, Petitioner-Appellant,

vs.

STATE OF HAWAII, Respondent-Appellee.

EUGENE L. S. BADO
CLERK OF THE SUPREME COURT
STATE OF HAWAII

2005 AUG 31 AM 10:08

FILED

APPEAL FROM THE FIFTH CIRCUIT COURT
(S.P.P. NO. 04-1-0008)

ORDER DISMISSING APPEAL
(By: Nakayama, J. for the court¹)

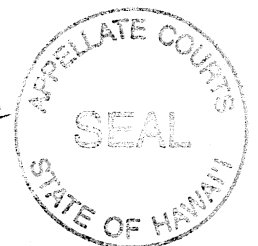
Upon review of the record, it appears that the circuit court's December 9, 2004 order denying appellant's HRPP Rule 40 petition for post-conviction relief was appealable by notice of appeal filed with the circuit court within thirty days after the order was entered. See HRPP 40(h); HRAP 4(b)(1). Appellant's notice of appeal was filed with the circuit court on May 9, 2005, five months after entry of the December 9, 2004 order and was untimely. 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,

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

DATED: Honolulu, Hawai'i, August 31, 2005.

FOR THE COURT:

Pamela A. Nakayama
Associate Justice



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