

*** NOT FOR PUBLICATION ***

NO. 27267

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

 CALVIN FLOURNOY, JR., Petitioner-Appellant

vs.

STATE OF HAWAI'I, Respondent-Appellee

 APPEAL FROM THE SECOND CIRCUIT COURT
 (S.P.P. NO. 05-1-0001)
ORDER DISMISSING APPEAL(By: Nakayama, J., for the court¹)

Upon review of the record, it appears that appellant's notice of appeal -- dated April 22, 2005 and filed on April 29, 2005 -- purported to appeal an April 18, 2005 circuit court order denying appellant's Rule 40 petition. However, the record shows that an order denying the Rule 40 petition was not entered by the circuit court until May 2, 2005 and no ruling, decision or order on the Rule 40 petition had been announced or entered by the circuit court at the time the notice of appeal was filed. Consequently, the April 29, 2005 notice of appeal is a legal nullity. See HRS § 641-11; HRPP 40(h); HRAP 4(b); Grattafiori v. State of Hawai'i, 79 Hawai'i 10, 897 P.2d 937 (1995) (a notice of appeal filed before the announcement or entry of an order denying post-conviction relief has no legal effect because there is no jurisdictional basis to file an appeal from an order that has not yet been announced or entered). Appellant did not file a new notice of appeal within thirty days after entry of the May 2,

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

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2005 order denying the Rule 40 petition. Thus, we lack jurisdiction over this appeal. Therefore,

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

DATED: Honolulu, Hawai'i, May 8, 2006.

FOR THE COURT:

Anna C. Nakamura

Associate Justice

