

*** NOT FOR PUBLICATION ***

NO. 27828

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

ANTHONY LIMAS, Petitioner-Appellant

vs.

STATE OF HAWAI'I, Respondent-Appellee

APPEAL FROM THE SECOND CIRCUIT COURT
(S.P.P. NO. 05-1-0035)

EM RINANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 JUN 15 AM 7:45

FILED

ORDER DISMISSING APPEAL

(By: Nakayama, J., for the court¹)

Upon review of the record, it appears that the circuit court's January 4, 2006 "Findings of Fact, Conclusions of Law, and Judgment Denying Petitioner's Petition to Vacate, Set Aside, or Correct Judgment or to Release Petitioner from Custody" pursuant to Rule 40 of the Hawai'i Rules of Penal Procedure (HRPP) was appealable by filing a notice of appeal with the circuit court within thirty days after entry of the January 4, 2006 order. See HRPP Rule 40(h); Rule 4(b)(1) of the Hawai'i Rules of Appellate Procedure (HRAP). Petitioner-Appellant Anthony M. Limas (Appellant Limas) filed his March 20, 2006 notice of appeal more than thirty days after entry of the January 4, 2006 order, and, thus, Appellant Limas's appeal is not timely. There is no evidence in the record that Appellant Limas tendered his March 20, 2006 notice of appeal to prison officials for forwarding to the court clerk within thirty days after entry of the January 4, 2006 order. Our recognized exceptions to the requirement for a timely notice of appeal do not apply to this

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

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case. "As a general rule, compliance with the requirement of the timely filing of a notice of appeal is jurisdictional, . . . and we must dismiss an appeal on our motion if we lack jurisdiction." Grattafiori v. State, 79 Hawai'i 10, 13, 897 P.2d 937, 940 (1995) (citations, internal quotation marks, and brackets omitted); HRAP Rule 26(b) ("[N]o court or judge or justice is authorized to change the jurisdictional requirements contained in Rule 4 of these rules."). Therefore,

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

DATED: Honolulu, Hawai'i, June 15, 2006.

FOR THE COURT:

Puna C. K. [Signature]
Associate Justice

