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Supreme Court
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NO. SCWC-11-0000644

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Respondent/Plaintiff-Appellee,

vs.

DENNIS HERN, Petitioner/Defendant-Appellant.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(ICA NO. CAAP-11-0000644; CASE NO. 1DTA-11-00302)

ORDER ACCEPTING APPLICATION FOR WRIT OF CERTIORARI,
VACATING ICA ORDER DISMISSING APPEAL FOR
LACK OF JURISDICTION, AND REMANDING APPEAL TO ICA

(By: Recktenwald, C.J., Nakayama, Acoba, and McKenna, JJ. and
Circuit Judge Crandall, in place of Duffy, J., recused)

Petitioner/defendant-appellant Dennis Hern filed a timely application for writ of certiorari on February 27, 2012 to review the intermediate court of appeals' (ICA) February 14, 2012 Order Dismissing Appeal for Lack of Appellate Jurisdiction. Petitioner appealed the district court's August 23, 2011 judgment dismissing without prejudice Case No. 1DTA-11-00302. The ICA concluded that the August 23, 2011 judgment was not a final decision appealable pursuant to HRS § 641-12 (Supp. 2011) because the judgment dismissing without prejudice is not "a decision on the merits and does not include a sentence," citing State v. Valiani, 57 Haw. 133, 134, 532 P.2d 75, 76 (1976), United States

v. Tsoie, 966 F.2d 1357, 1359 (10th Cir. 1992), and State v. Kilborn, 109 Hawai'i 435, 442, 127 P.3d 95 102 (App. 2005).

HRS § 641-12 authorizes appeals from "all final decisions and final judgments of district courts in criminal matters." District court Case No. 1DTA-11-00302 was dismissed by the district court, without prejudice, by judgment of August 23, 2011, for failure to commence trial within the six-month period prescribed by HRPP Rule 48. The August 23, 2011 judgment terminated the proceedings in Case No. 1DTA-11-00302.

Cf. State v. Kalani, 87 Hawai'i 260, 261-62, 953 P.2d 1358, 1359-60 (1998) (finding jurisdiction to consider an appeal brought by prosecution under HRS § 641-13(1), since "a dismissal without prejudice is a final order -- it terminates the current case") (emphasis in original)). It is the final decision of the district court that is appealable by petitioner pursuant to HRS § 641-12. The ICA's reliance on Valiani, Tsoie and Kilborn was misplaced.

Petitioner's application for writ of certiorari is accepted. The ICA's February 14, 2012 Order Dismissing Appeal for Lack of Appellate Jurisdiction is vacated. Petitioner's appeal is remanded to the ICA for disposition.

DATED: Honolulu, Hawai'i, April 11, 2012.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ Sabrina S. McKenna

/s/ Virginia L. Crandall

