

**Electronically Filed
Intermediate Court of Appeals
CAAP-18-0000913
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NO. CAAP-18-0000913

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

STATE OF HAWAII, Plaintiff-Appellee,
v.
ALFRED NAPAHUELUNA SPINNEY, Defendant-Appellant,

APPEAL FROM THE DISTRICT COURT OF THE THIRD CIRCUIT
NORTH AND SOUTH HILO DIVISION
(CASE NO. 3DCW-17-0000900)

ORDER DISMISSING APPELLATE COURT CASE NUMBER
CAAP-18-0000913 FOR LACK OF APPELLATE JURISDICTION
(By: Ginoza, Chief Judge, Fujise and Leonard, JJ.)

Upon review of the record of district court criminal case number 3DCW-17-0000900 for appellate court case number CAAP-18-0000913, it appears that we lack appellate jurisdiction pursuant to Hawaii Revised Statutes (HRS) § 641-12(a) (2016). Defendant-Appellant Alfred Napahueluna Spinney (Spinney), pro se, appeals from the Honorable M. Kanani Laubach's November 15, 2018 order (a) requiring Spinney to appear in district court on November 23, 2018, and (b) informing the parties that their lists of exhibits and witnesses and their motions were due by November 19, 2018, for the proceedings relating to Plaintiff-Appellee State of Hawaii's (the State) April 4, 2017 complaint against Spinney for criminal contempt of court in violation of HRS § 710-1077 (2014 & Supp. 2017). Under these circumstances, dismissal of the appeal is warranted.

"The right of appeal in a criminal case is purely statutory[.]" State v. Nicol, 140 Hawai'i 482, 485, 403 P.3d 259, 262 (2017) (citation and internal quotation marks omitted). The Hawai'i Intermediate Court of Appeals has jurisdiction "[t]o hear and determine appeals from any court or agency when appeals are allowed by law[.]" HRS § 602-57(1) (2016). HRS § 641-12(a) provides that "[a]ppeals upon the record shall be allowed from all final decisions and final judgments of district courts in all criminal matters." Consequently, "in order to appeal a criminal matter in the district court, the appealing party must appeal from a written judgment or order that has been filed with the clerk of the court pursuant to HRAP Rule 4(b)(3)." State v. Bohannon, 102 Hawai'i 228, 236, 74 P.3d 980, 988 (2003); see also Rule 32(c)(2) of the Hawai'i Rules of Penal Procedure.

In the instant appeal, the November 15, 2018 interlocutory order is not independently appealable under HRS § 641-12(a). It will be eligible for appellate review after a timely appeal from a future appealable final judgment under the principle that, "[a]s a general rule, an appeal from a final judgment in a case brings up for review all preceding interlocutory orders in the case." State v. Adam, 97 Hawai'i 475, 482, 40 P.3d 877, 884 (2002) (citations omitted). The district court has not yet entered a final judgment on the State's original April 4, 2017 complaint against Spinney for criminal contempt of court in violation of HRS § 710-1077, and, thus, we lack appellate jurisdiction over this appeal.¹

¹ "Generally, the filing of a notice of appeal divests the trial court of jurisdiction over the appealed case." TSA International Limited v. Shimizu Corporation, 92 Hawai'i 243, 265, 990 P.2d 713, 735 (1999) (citations omitted). "The general rule, however, assumes that the notice of appeal is valid under the applicable statutory provisions and procedural rules. Where the notice of appeal is jurisdictionally defective, filing the notice does not transfer jurisdiction from the trial court to the appellate court." Ontiveros, 82 Hawai'i 446, 449, 923 P.2d 388, 391 (1996) (citations omitted; emphasis added).

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

Therefore, IT IS HEREBY ORDERED that appellate court case number CAAp-18-0000913 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, December 7, 2018

Tina M. King
Chief Judge

Donald D. H. King
Associate Judge

Jeffrey R. King
Associate Judge