CHAPTER 641
APPEALS

Part I. Appeals in Civil Actions and Proceedings

Part II. Appeals in Criminal Proceedings

Part III. General Provisions

Note

Act 89, L 1972, completely revised this chapter. The sections of the chapter are renumbered as set forth below. The following table shows the current disposition of the chapter.

Disposition Table

HRS (1968)	Herein	HRS (1968)	Herein
641-1	R	641-18	641-15
641-2	641-1	641-19 to 23	R
641-3	R	641-24	641-16
641-4	641-2	641-31	641-17
641-5	641-3	641-32 to 36	R
641-11	641-11	641-41	641-18
641-11.5	641-12	641-42	R
641-12	641-13	641-43	641-31
641-13 to 15	R	641-44	R
641-16	641-14	641-45	641-32
641-17	R	641-46	R

Amendments of this chapter by L 1979, c 111, take precedence over conflicting statutes. L 1979, c 111, §28.

Prior hardbound publications of volume 13 contained a Chapter Note at the back of chapter 641, consisting of annotations that were based on prior law pertaining to appeals to the supreme court and the circuit court. The Chapter Note has been omitted from the 2016 replacement volume. The latest version of the Chapter Note appeared in the 1993 replacement volume.

Cross References

Appeals, foreclosures, see chapter 667.

Rules of Court

Appeals to supreme court and intermediate court of appeals, see Hawaii Rules of Appellate Procedure; appeal to circuit court, see HRCP rule 72.

See also Hawaii Appellate Mediation Program Rules.

Law Journals and Reviews

Remarks on Alternative Proposals to Remedy Appellate Court Congestion in Hawaii. 14 HBJ, no. 2, at 55 (1978).

"**PART I. APPEALS IN CIVIL ACTIONS AND PROCEEDINGS**

§641-1 Appeals as of right or interlocutory, civil matters. (a) Appeals shall be allowed in civil matters from all final judgments, orders, or decrees of circuit and district courts and the land court to the intermediate appellate court, subject to chapter 602.

(b) Upon application made within the time provided by the rules of court, an appeal in a civil matter may be allowed by a circuit court in its discretion from an order denying a motion to dismiss or from any interlocutory judgment, order, or decree whenever the circuit court may think the same advisable for the speedy termination of litigation before it. The refusal of the circuit court to allow an appeal from an interlocutory judgment, order, or decree shall not be reviewable by any other court.

(c) An appeal shall be taken in the manner and within the time provided by the rules of court. [L 1892, c 57, §69; am L 1892, c 109, §1; am L 1898, c 40, §1; RL 1925, §2509; RL 1935, §3501; am L 1939, c 18, §1; am L 1941, c 122, §1; RL 1945, §9503; am L 1945, c 194, §1; RL 1955, §208-3; HRS §641-2; am L 1972, c 89, pt of §5; ren HRS §641-1; am L 1979, c 111, §6(1); am L 2004, c 202, §66; am L 2006, c 94, §1; am L 2010, c 109, §1]

Rules of Court

Appeals, when taken, see HRAP rule 4.

Law Journals and Reviews

Interlocutory and Final Appeals in Hawaii. 9 HBJ, no. 2, at 45 (1972).

Appellate Caseload in Hawaii. 13 HBJ, no. 3, at 3 (1977).

Through the Looking Glass--Finality, Interlocutory Appeals and the Hawaii Supreme Court's Supervisory Powers. 9 UH L. Rev. 87 (1987).

Striking a Balance: Procedural Reform Under the Lum Court. 14 UH L. Rev. 223 (1992).

Case Notes

Judgment as to one and not all of multiple parties is interlocutory and not appealable without allowance by circuit

court. 51 H. 137, 453 P.2d 753 (1969); 51 H. 307, 459 P.2d 195 (1969).

Interlocutory appeal requires allowance of court. 51 H. 480, 463 P.2d 530 (1969).

Finality of order or decree, how determined. 54 H. 276, 506 P.2d 1 (1973).

Appeals to circuit courts under §286-157, involving revocation of driver's license, not superseded by this section. 54 H. 519, 511 P.2d 161 (1973).

Procedural orders leaving cause pending held interlocutory. 56 H. 662, 548 P.2d 251 (1976).

No jurisdiction of appeal prior to final judgment, unless allowed as interlocutory appeal. 57 H. 61, 549 P.2d 477 (1976).

When trial court refuses appeal from interlocutory order, supreme court is without jurisdiction. 57 H. 73, 549 P.2d 1147 (1976).

Where disposition of case involving multiple claims or parties is embodied in several orders, collectively the orders can constitute a final judgment. 57 H. 273, 554 P.2d 233 (1976).

Divorce decree is final and appealable despite reservation of support or custody question. 57 H. 519, 559 P.2d 744 (1977).

Burden is on appellant to prove that factual findings of judge were clearly erroneous. 57 H. 599, 561 P.2d 1286 (1977).

Appeal from summary judgment held premature since other claims remained pending. 58 H. 552, 574 P.2d 884 (1978).

Motions, timely filed after judgment, toll running of time for appeal until court's ruling on the motions. 58 H. 552, 574 P.2d 884 (1978).

The prerequisite for an appellate court to find abuse of discretion is that all appraisals of the evidence would result in a different finding. 60 H. 354, 590 P.2d 80 (1979).

Since factfinder's interpretation of a nondiscrimination provision was reasonable it was not set aside on appeal. 60 H. 361, 590 P.2d 993 (1979).

Trial court's resolving of conflicting evidence will not be set aside unless clearly erroneous. 60 H. 381, 590 P.2d 564 (1979).

Order imposing sanctions for failure to provide discovery may be immediately appealed. 60 H. 467, 591 P.2d 1060 (1979).

Order granting disqualification of attorney is interlocutory and not appealable without leave of court but writ of mandamus may be available. 61 H. 552, 606 P.2d 1320 (1980).

Court abused discretion in allowing interlocutory appeal. 63 H. 668, 634 P.2d 595 (1981).

State was "aggrieved" by order to pay attorney's fees even though no further liability imposed. 64 H. 345, 641 P.2d 1321 (1982).

Trial court shall carefully consider whether an interlocutory appeal will more speedily determine litigation, and set forth its reasons if it so concludes. 67 H. 510, 694 P.2d 388 (1985).

Orders denying stay and application for arbitration are appealable. 68 H. 98, 705 P.2d 28 (1985).

Denial of motion to quash garnishee summons was not a final appealable order. 68 H. 368, 714 P.2d 936 (1986).

Appealability of foreclosure decree in multiple-party or multiple-issue case. 69 H. 11, 731 P.2d 151 (1987).

Order was appealable where it stayed judgment for lease termination pending arbitration to determine value of leasehold improvements. 69 H. 112, 736 P.2d 55 (1987).

Grant of interlocutory appeal was improper. 71 H. 644, 802 P.2d 480 (1990).

Orders denying an application for a stay of proceedings until arbitration had been completed made in accordance with §658-5 are appealable orders under subsection (a). 73 H. 433, 834 P.2d 1294 (1992).

Orders compelling arbitration under §658-3 are appealable orders within meaning of this section. 74 H. 210, 847 P.2d 652 (1992).

Jurisdiction properly lies in supreme court to hear and determine appeals from district court judgments after an administrative hearing, pursuant to §602-5(1) and subsection (a). 75 H. 1, 856 P.2d 1207 (1993).

Plaintiff had standing to appeal on ground it was aggrieved by summary judgment order because its interest in obtaining injunctive relief against defendant-appellee increased if plaintiff did not prevail against defendant-appellant. 75 H. 370, 862 P.2d 1048 (1993).

Supreme court was vested with appellate jurisdiction, where family court's determination of jurisdiction, followed by award of foster custody, met requisite degree of finality of an appealable order. 77 H. 109, 883 P.2d 30 (1994).

Sanctions order was not a final appealable order, where sanctions order failed to satisfy strict prerequisites of collateral order doctrine; appeal dismissed for lack of appellate jurisdiction. 77 H. 157, 883 P.2d 78 (1994).

Order denying employer's motion to intervene constituted a final appealable order. 79 H. 352, 903 P.2d 48 (1995).

Circuit court dismissal of case without prejudice did not affect appellate jurisdiction. 81 H. 171, 914 P.2d 1364 (1996).

Where intervenors-defendants were parties to action, received circuit court permission to file interlocutory appeal and did file notice of appeal, no reason to dismiss appeal based on standing or other jurisdictional issues under this section. 87 H. 91, 952 P.2d 379 (1998).

There is no appellate jurisdiction over interlocutory appeals of discovery orders regarding the production of documents against a claim of attorney-client privilege. 88 H. 319, 966 P.2d 631 (1998).

Though supreme court's jurisdiction over an appeal is limited, pursuant to subsection (a), to a review of final judgments, orders, and decrees, where appellant would have been subjected to irreparable injury if appellate review awaited the final outcome of the unresolved garnishment matters, the garnishee order was immediately appealable pursuant to the Forgay rule. 90 H. 345, 978 P.2d 783 (1999).

An order that fully disposes of an action in district court may be final and appealable without the entry of judgment on a separate document, as long as the appealed order ends the litigation by fully deciding the rights and liabilities of all parties and leaves nothing further to be adjudicated. 91 H. 425, 984 P.2d 1251 (1999).

The fact that the question of who was responsible for payment for particular services received by the children could be decided independently from the need for the family court's continuing jurisdiction, coupled with the importance of obtaining a definitive ruling on the issue, established that the "requisite degree of finality" was present to permit appellate jurisdiction. 96 H. 272, 30 P.3d 878 (2001).

Trial court's order was appealable under subsection (a) as it granted in part and denied in part defendants' motion, ordering return of garnished funds, awarding costs, and denying request for attorneys' fees, disposing of all issues raised in the motion; order left nothing further to be accomplished and was, therefore, final. 103 H. 153, 80 P.3d 974 (2003).

Where final order was not reduced to a separate judgment as required by HRCP rule 58, it was not appealable under this section. 113 H. 406, 153 P.3d 1091 (2007).

The order confirming the partition sale met the requirements of appealability under the Forgay doctrine; the confirmation order effectively terminated the petitioners' rights to the property and they would suffer irreparable injury if appellate review was postponed until final judgment. 131 H. 457, 319 P.3d 376 (2014).

Appeal declared frivolous, where appellant appealed decree of foreclosure in a multiple claims and multiple parties case without an HRCP rule 54(b) certification and later argued lack of appellate jurisdiction because of lack of the certification. 2 H. App. 140, 627 P.2d 296 (1981).

Foreclosure decree is deemed final for appeal purposes although many matters remain unsettled. 2 H. App. 140, 627 P.2d 296 (1981).

Order awarding broker's fees in a foreclosure sale case does not have the finality required by subsection (a). 2 H. App. 151, 627 P.2d 304 (1981).

Interlocutory injunctions, when appealable without allowance of trial court. 2 H. App. 272, 630 P.2d 646 (1981).

Judgment in a multiple claims and multiple parties case is not reviewable absent certification under HRCP rule 54(b). 2 H. App. 296, 630 P.2d 1084 (1984).

Order was interlocutory where it decided liability but left relief pending. 5 H. App. 20, 674 P.2d 1024 (1984).

Not enlarged or modified by HRCP rule 54; where case involves multiple claims or parties, appellate jurisdiction of those fully decided claims or rights must be based on satisfaction of HRCP rule 54 requirements. 5 H. App. 222, 686 P.2d 37 (1984).

Order adjudging paternity but reserving child support, custody, and other matters is not final and appealable. 5 H. App. 610, 704 P.2d 940 (1985).

Interlocutory appeal by lienor must be sought under this section or HRCP rule 54(b). 7 H. App. 151, 748 P.2d 1370 (1988).

Court lacked jurisdiction to hear appeal from summary judgment where claims of party in interest not named in notice of appeal remained pending. 8 H. App. 431, 807 P.2d 606 (1991).

Probate court's decision that a parcel of real property is not part of decedent's estate is an appealable collateral order. 83 H. 412 (App.), 927 P.2d 420 (1996).

Plaintiff's appeal of causation order untimely where plaintiff's notice of appeal was filed within thirty days of written order granting plaintiff's motion for leave to file interlocutory appeal, but not within thirty days of order appealed from. 86 H. 301 (App.), 949 P.2d 141 (1997).

Where Hawaii supreme court entered an order dismissing the appeal of an order selling property, on the ground that "a final judgment closing the proceeding has not been entered" and the "order approving the sale of real property was an interlocutory order that was not certified for interlocutory appeal", appellate court did not have jurisdiction to decide the point on appeal. 105 H. 507 (App.), 100 P.3d 77 (2004).

Where all claims against all parties had not been finally decided when the notices of appeal were filed, appellate court did not have appellate jurisdiction and appeal was dismissed for lack of appellate jurisdiction. 112 H. 367 (App.), 145 P.3d 910 (2006).

Circuit court's order, to the extent that it denied defendant's request to compel arbitration, was an appealable order where order fell within a small class of orders that were appealable because "the rights conferred by chapter 658

[repealed], if applicable, would be lost, probably irreparably" if the party was required to wait until final judgment to effectively review the order. 118 H. 308 (App.), 188 P.3d 822 (2008).

Circuit court erred, where it approved a stipulation to extend the deadline for submitting plaintiff's notice of appeal without requiring a showing of good cause, as required by HRAP rule 4(a)(4)(A). 126 H. 92 (App.), 267 P.3d 676 (2011).

" **§641-2 Review on and disposition of appeal.** [(a)] In case of appeal from a judgment, order, or decree of a circuit or district court or the land court, in a civil matter, the appellate court shall have power to review, reverse, affirm, amend, or modify such judgment, order, or decree, in whole or in part, as to any or all of the parties. It may enter an amended or modified judgment, order, or decree, or may remand the case to the trial court for the entry of the same or for other or further proceedings, as in its opinion the facts and law warrant. Any judgment, order, or decree entered by the appellate court may be enforced by it or remitted for enforcement by the trial court.

[(b)] Every appeal shall be taken on the record, and no new evidence shall be introduced in the supreme court. The appellate court may correct any error appearing on the record, but need not consider a point that was not presented in the trial court in an appropriate manner. No judgment, order, or decree shall be reversed, amended, or modified for any error or defect, unless the court is of the opinion that it has injuriously affected the substantial rights of the appellant. [L 1892, c 57, §70; RL 1925, §2511; RL 1935, §3503; RL 1945, §9505; RL 1955, §208-5; HRS §641-4; am L 1970, c 188, §39; am L 1972, c 89, pt of §5; ren HRS §641-2; am L 2004, c 202, §67; am L 2006, c 94, §1; am L 2010, c 109, §1]

Rules of Court

Preservation of error, prejudicial error as requisites, see HRCP rules 46, 61.

Case Notes

Under certain conditions, judgment can be reversed on legal theory not raised before. 56 H. 466, 540 P.2d 978 (1975).

Supreme court cannot disregard jurisdictional defects in an appeal. 57 H. 61, 549 P.2d 477 (1976).

Appellate court was not precluded from considering equity defense of unclean hands raised for the first time on appeal. 57 H. 215, 553 P.2d 733 (1976).

Evidence outside trial record may not be referred to in appellate brief unless approved by trial court pursuant to HRCP rule 75(c). 57 H. 405, 557 P.2d 125 (1976).

Court's power to render final judgment on reversal should be exercised where the result would be foreordained on remand. 58 H. 345, 569 P.2d 884 (1977).

Trial court's possible error in granting directed verdict found to be harmless in light of subsequent jury instructions. 60 H. 214, 587 P.2d 1229 (1978).

Where surviving spouse failed to show how family court's erroneous finding of fact affected the court's decision, the erroneous finding did not affect surviving spouse's substantial rights and did not constitute reversible error. 100 H. 397, 60 P.3d 798 (2003).

Mentioned: 74 H. 210, 847 P.2d 652 (1992).

Scope of review. Review of factual issues, see 42 H. 250, 256 (1957); 42 H. 264, 267 (1958); 45 H. 83, 86-87, 363 P.2d 964 (1961). To extent governed by Hawaii Rules of Civil Procedure, see HRCP rule 52(a), construed in 42 H. 111, 116 (1957); 42 H. 286, 297 (1958); 43 H. 76, 82 (1958); 43 H. 119, 124 (1959); 44 H. 327, 342, 359 P.2d 164 (1960); 44 H. 582, 358 P.2d 53 (1960), den'g reh'g of 44 H. 464, 355 P.2d 25 (1960); 45 H. 128, 139, 363 P.2d 969 (1961); 45 H. 232, 233-234, 364 P.2d 646 (1961); 45 H. 445, 452, 370 P.2d 463 (1962); 45 H. 521, 550-551, 371 P.2d 379 (1962); 46 H. 233, 238, 377 P.2d 708 (1962); 46 H. 353, 364, 380 P.2d 488 (1963); 46 H. 475, 513-514, 382 P.2d 920 (1963); 47 H. 145, 147, 384 P.2d 300 (1963); 47 H. 220, 225, 386 P.2d 855 (1963); 47 H. 577, 585, 393 P.2d 89 (1964); 48 H. 152, 168, 397 P.2d 593 (1964); 48 H. 193, 202, 397 P.2d 552 (1964), reh'g den. 48 H. 391, 402 P.2d 678 (1965); 49 H. 62, 68, 412 P.2d 326 (1966); 49 H. 160, 180, 413 P.2d 221 (1966); 49 H. 661, 667, 426 P.2d 816 (1967).

Cases decided before adoption of the Hawaii Rules of Civil Procedure.

Newly discovered evidence, admissibility of, effect. 3 H. 64 (1867); 7 H. 573 (1889); 14 H. 204 (1902); 33 H. 98 (1934); 38 H. 605 (1950). Review generally on the record. 14 H. 204 (1902); 23 H. 571, 572 (1917).

In equitable actions, findings of trial judge not binding on supreme court and may make its own findings. 15 H. 526 (1904); 22 H. 288 (1914); 28 H. 590, 662 (1925); 29 H. 638 (1927); 33 H. 701 (1927); 34 H. 363 (1937); 34 H. 228 (1937); 34 H. 303

(1937); 39 H. 185 (1952); 158 F.2d 122 (1946); see also 23 H. 646, 649 (1917). In equity case, presumption correctly decided. 22 H. 391 (1914). In the case of conflicting evidence, findings entitled to great weight. 10 H. 308 (1896); 15 H. 526 (1904); 22 H. 17 (1914); 22 H. 391 (1914); 25 H. 22, 33 (1919); 26 H. 137 (1921); 29 H. 638 (1927); 29 H. 698 (1927); 30 H. 446 (1928); 32 H. 659 (1933); 32 H. 751 (1933); 33 H. 745 (1936); 33 H. 846 (1936); 34 H. 87, 91 (1937); 38 H. 616 (1950); 40 H. 279 (1953); 40 H. 386 (1954). Even though the evidence be meager, if sustains findings, will not be disturbed. 24 H. 277 (1918). Where evidence is of slight weight and doubtful character, findings not followed. 33 H. 701 (1936); 35 H. 689 (1940). In divorce cases; supreme court will draw its own conclusions; in cases turning wholly or largely on credibility of witnesses or weight of evidence, findings of trial judge accorded much weight. 21 H. 339 (1912); 22 H. 189 (1914); 29 H. 866 (1927); 30 H. 240 (1927); 34 H. 312 (1937); 36 H. 49 (1942); 37 H. 512 (1947); should control unless the evidence clearly requires the contrary conclusion. 32 H. 177 (1931).

" **[§641-3] Stay of proceedings to enforce a judgment.** (a) This section applies to civil cases in which the rules of court as to stay of proceedings to enforce a judgment do not apply, unless otherwise provided by statute.

(b) No execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of ten days after its entry. The court, upon good cause shown, may allow execution to issue or other appropriate action to be taken for the enforcement of the judgment within the ten-day period unless, within such time as shall be allowed by the court, a stay is obtained under subsection (c) or (d).

(c) In its discretion and on such conditions as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or other motion, or when justice so requires in other cases until such time as the court may fix.

(d) When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

(e) Notwithstanding the foregoing, there shall be no stay of an appealable order for counsel fee, suit money, temporary alimony, or other provisional order of a like nature made before final judgment in the cause, if the appellee shall give a bond in such amount and with such sureties as the court requires,

conditioned for indemnification of the appellant for all damages that the appellant may sustain by reason of the payment or performance of the order, in case the appeal shall be sustained.

(f) Within the meaning of this section "judgment" includes a decree and any order from which an appeal lies. [L 1892, c 57, §71; am L 1903, c 32, §17; RL 1925, §2512; RL 1935, §3504; RL 1945, §9506; RL 1955, §208-6; HRS §641-5; am L 1970, c 188, §39; am L 1972, c 89, pt of §5; ren HRS §641-3; gen ch 1985]

Rules of Court

See HRCP rule 62.

Case Notes

Regarding amount of supersedeas bond in tenant's appeal from judgment awarding possession of land. 58 H. 546, 574 P.2d 128 (1978).

Supersedeas bond, filed within appeal period, constituted sufficient notice of appeal to correct prematurely filed notice. 58 H. 552, 574 P.2d 884 (1978).

Confers right of appeal on the State in nine instances, but not including pretrial discovery orders. 71 H. 304, 788 P.2d 1281 (1990).

Cases decided before adoption of the Hawaii Rules of Civil Procedure.

Pending appeal, decree should not be enforced in whole or in part. 20 H. 370 (1911); 20 H. 682 (1911). Appeals from judgment in habeas corpus proceedings stay execution. 13 H. 534 (1901); 19 H. 346 (1909); 26 H. 701 (1923). While supersedeas operates, statute of limitations suspended. 20 H. 370 (1911). An abortive appeal, until disposed of, operates as a supersedeas. 20 H. 370 (1911). Re stay pending interlocutory appeal. 26 H. 69 (1921). That part of section permitting execution to issue pending appeal does not apply to district court cases wherein jury trial is demandable of right. 14 H. 524 (1902). But see 15 H. 590 (1904), where amendment to statute was upheld and execution ordered to issue in accordance therewith. Executions pending appeal apply to proceedings for summary possession as well as to other proceedings and cannot issue unless upon good cause shown and an opportunity to file supersedeas bond. 15 H. 624 (1904). In cases other than for the nonpayment of rent, an appeal from a judgment of summary possession does not operate as a supersedeas. 27 H. 362 (1923). Liability to execution notwithstanding appeal does not detract from the adequacy of the remedy of assumpsit at law. 27 H. 308 (1923). Bond; on appeal by guardian from money judgment against

guardian on accounting, not exempt from bond requirement. 27 H. 129 (1923). Effect of appeal on sequestration. 33 H. 725 (1936); appeal as stay, 33 H. 911 (1936).

"PART II. APPEALS IN CRIMINAL PROCEEDINGS

§641-11 From circuit courts. Any party aggrieved by the judgment of a circuit court in a criminal matter may appeal to the intermediate appellate court, subject to chapter 602, in the manner and within the time provided by the rules of court. The sentence of the court in a criminal case shall be the judgment. All appeals shall be filed with the clerk of the supreme court and shall be subject to one filing fee. [L 1892, c 95, §1; am L 1919, c 44, §1; RL 1925, §2521; am L 1925, c 211, §1; am L 1931, c 37, §1; RL 1935, §3550; RL 1945, §9551; RL 1955, §212-1; HRS §641-11; am L 1970, c 188, §39; am L 1972, c 89, pt of §5; am L 1979, c 111, §6(2); gen ch 1985; am L 1989, c 62, §1; am L 2004, c 202, §68; am L 2006, c 94, §1; am L 2010, c 109, §1]

Note

As to provision that sentence of the court is the judgment, see §641-18, suspension of sentence, and HRPP rule 32(c), entry of judgment.

Rules of Court

Appeals, when taken, see HRAP rule 4.
Post-conviction proceedings and documents, see HRPP rule 40.

Law Journals and Reviews

The Application of the Collateral Order Doctrine to Criminal Appeals in Hawai‘i. 19 UH L. Rev. 73 (1997).

Case Notes

For purposes of appeal, judgment of conviction is not final where it does not include any sentence. 54 H. 485, 510 P.2d 88 (1973).

Where no notice of judgment is given, period for filing appeal may be extended. 56 H. 444, 540 P.2d 61 (1971).

Failure of appointed counsel to give timely notice of appeal did not foreclose defendant's right to appeal. 57 H. 268, 554 P.2d 236 (1976).

Where there is no announcement of the decision and no notice of entry of judgment is given, time for filing notice of appeal does not run until notice is in fact received. 59 H. 255, 580 P.2d 63 (1978).

Review of denial of reduction of sentences proper since new standards of court discretion had been adopted. 60 H. 309, 588 P.2d 927 (1979).

Appeal permitted only from a final judgment or sentence. 63 H. 9, 619 P.2d 1076 (1980).

Jurisdictional defect in appeal cannot be waived by the parties or disregarded by the appellate court. 63 H. 9, 619 P.2d 1076 (1980).

Where charges against criminal defendant were dismissed, defendant was not an "aggrieved party" with standing to appeal an order approving partial fees. 66 H. 366, 663 P.2d 630 (1983).

Where defendants contended there was another exception to finality of judgment requirement of this section, specifically, that an order denying a motion to dismiss an indictment based on double jeopardy grounds fell into collateral order exception to final judgment rule, collateral order exception permitted an interlocutory appeal of an order denying a pretrial motion to dismiss an indictment on double jeopardy grounds. 77 H. 351, 884 P.2d 729 (1994).

Supreme court lacked appellate jurisdiction to hear defendant's appeal of defendant's acquittal on count III kidnapping where defendant was not an "aggrieved" party within the meaning of this section; because defendant would remain under health director's custody based on trial court's acquittals as to counts I and II, which would have warranted convictions but for defendant's affirmative defense of insanity, defendant was not aggrieved by trial court's acquittal on count III as acquittal did not adversely impact defendant's rights. 102 H. 130, 73 P.3d 668 (2003).

Where the case was a criminal matter filed by plaintiff State of Hawaii against defendant and the police department (HPD) was not a party to the case, HPD, as a nonparty, was not authorized to appeal the respondent judge's order denying HPD's motion to quash defendant's subpoena duces tecum pursuant to this section if judgment was entered against defendant; HPD was also not authorized to appeal the order pursuant to the interlocutory appeal statute for defendants, §641-17, or the appeal statute for the prosecution, §641-13; thus, having no remedy by way of appeal, HPD properly sought redress from the order by mandamus. 122 H. 204, 225 P.3d 646 (2010).

Defendant not "aggrieved party" with standing to appeal order granting partial fees. 6 H. App. 20, 709 P.2d 105 (1985).

Appellate court lacked jurisdiction under this section and HRAP rule 4(b) where defendant failed to appeal within the thirty-day time period mandated; defendant's motion to withdraw no contest plea did not "reopen" final judgment such that order denying defendant's motion became the appealable final judgment under this section and HRAP rule 4(b). 96 H. 462 (App.), 32 P.3d 106 (2001).

" **§641-12 From district courts.** [(a)] Appeals upon the record shall be allowed from all final decisions and final judgments of district courts in all criminal matters. Such appeals may be made to the intermediate appellate court, subject to chapter 602, whenever the party appealing shall file notice of the party's appeal within thirty days, or such other time as may be provided by the rules of the court.

[(b)] Within a reasonable time after an appeal has been perfected from a decision of a district court to the appellate court in a criminal matter, it shall be incumbent upon the district court to make a return thereof, together with all papers and exhibits filed in such case.

[(c)] It shall be the duty of the clerk of the supreme court to transmit within a reasonable time, to the district court from whose decision the appeal was made, a statement showing the disposition of the case. [L 1972, c 89, pt of §5; HRS §641-11.5; ren HRS §641-12; am L 1979, c 111, §6(3); gen ch 1985; am L 2004, c 202, §69; am L 2006, c 94, §1; am L 2010, c 109, §1]

Rules of Court

Appeals, when taken, see HRAP rule 4.

Case Notes

The supreme court does not have jurisdiction to entertain appeals from interlocutory orders of the district courts in criminal cases. 57 H. 133, 552 P.2d 75 (1976); 62 H. 297, 613 P.2d 362 (1980).

Where defendant's interlocutory appeal from district court's denial of defendant's motion to dismiss on double jeopardy grounds did not satisfy prerequisites of collateral order exception, supreme court did not have to decide whether exception may apply to appeals from collateral orders of district court. 82 H. 446, 923 P.2d 388 (1996).

Where sentence imposed was not the final sentence because the district court expressly left open the possibility that its

sentence of defendant might include an order requiring defendant to pay restitution, and the court did not finally decide whether it would order defendant to pay restitution and, if so, in what amount, the judgment was not final and, because it was not final, it was not appealable. 109 H. 435 (App.), 127 P.3d 95 (2005).

" **§641-13 By State in criminal cases.** An appeal may be taken by and on behalf of the State from the district or circuit courts to the intermediate appellate court, subject to chapter 602, in all criminal matters, in the following instances:

(1) From an order or judgment quashing, setting aside, or sustaining a motion to dismiss any indictment, information, or complaint or any count thereof;

(2) From an order or judgment sustaining a special plea in bar or dismissing the case where the defendant has not been put in jeopardy;

(3) From an order granting a new trial;

(4) From an order arresting judgment;

(5) From a ruling on a question of law adverse to the State, where the defendant was convicted and appeals from the judgment;

(6) From the sentence, on the ground that it is illegal;

(7) From a pretrial order granting a motion for the suppression of evidence, including a confession or admission, or the return of property, in which case the appellate court shall give priority to the appeal and the order shall be stayed pending the outcome of the appeal;

(8) From an order denying a request by the State for protective order for nondisclosure of witness for reason of personal safety under rule 16(e)(4) of the Hawaii rules of penal procedure, in which case the appellate court shall give priority to the appeal and the order shall be stayed pending outcome of the appeal;

(9) From a judgment of acquittal following a jury verdict of guilty; and

(10) From a denial of an application for an order of approval or authorization of the interception of a wire, oral, or electronic communication pursuant to section 803-44. [L 1911, c 40, §1; RL 1925, §2522; am L 1931, c 37, §2; RL 1935, §3551; RL 1945, §9552; RL 1955, §212-2; HRS §641-12; am L 1972, c 148, §1; ren HRS §641-13; am L 1977, c 146, §1; am L 1979, c 111, §6(4); am L 1982, c 81, §1; am L 1987, c 84, §1; am L

2004, c 62, §2 and c 202, §70; am L 2006, c 94, §1 and c 200, §3; am L 2010, c 109, §1]

Rules of Court

Appeals, when taken, see HRAP rule 4.

Case Notes

Remand after reversal of ruling sustaining demurrer. 23 H. 409 (1916).

Special plea in bar, sustaining of, what constitutes. 25 H. 55 (1919); 47 H. 361, 389 P.2d 439 (1964). See 39 H. 522 (1952).

No appeal by State from ruling on question of law unless defendant convicted and appeals. 34 H. 662 (1938).

Oral ruling of district magistrate constitutes an order within the meaning of this section. 41 H. 591 (1957).

No right to review after acquittal of accused by verdict of jury. 42 H. 102 (1957).

Appeal by State from oral order of circuit court dismissing indictment is nugatory. 45 H. 501, 370 P.2d 480 (1962).

Pretrial order to suppress evidence; "special plea in bar" construed. 50 H. 525, 445 P.2d 36 (1968).

When State appeals from the quashing of an indictment, defendant is still subject to original requirements of bail. 53 H. 76, 488 P.2d 329 (1971).

Conditional discharge of defendant under §712-1255 is not a final disposition of the case appealable by the State. 60 H. 576, 592 P.2d 832 (1979).

Stipulation for joint hearing on motion to suppress and trial on merits is not a waiver by State of its right to appeal from ruling on motion to suppress. 62 H. 44, 609 P.2d 131 (1980).

Under circumstances, jeopardy did not attach even though jury was sworn. 64 H. 395, 641 P.2d 1338 (1982).

Jeopardy did not attach where case dismissed after defendant arraigned but before State's first witness sworn. 68 H. 238, 709 P.2d 607 (1985).

State could appeal only under paragraph (2) where case dismissed after all evidence taken. 68 H. 653, 729 P.2d 385 (1986).

Deferred acceptance of guilty and deferred acceptance of no contest pleas are not appealable. 69 H. 438, 746 P.2d 568 (1987).

Authorizes appellate jurisdiction to review orders granting pretrial motions to suppress. 70 H. 206, 767 P.2d 1238 (1989).

Language does not allow an appeal from a sentence on the ground that the sentence was imposed in an illegal manner, but allows an appeal from an illegal sentence. 71 H. 624, 801 P.2d 558 (1990).

State's right to appeal in criminal cases is limited to instances stated in section; section does not give State right to appeal from granting of deferred acceptance of guilty or deferred acceptance of no contest pleas. 74 H. 75, 837 P.2d 776 (1992).

While it is necessary for "entire case" to be dismissed for paragraph (2) to apply, there is nothing in the language of this section to indicate that this would prevent paragraph (1) from applying; prosecution not barred from bringing appeal of dismissal of counts of indictment, where counts dismissed after trial began because counts did not include essential elements of offenses charged. 78 H. 373, 894 P.2d 70 (1995).

In a jury trial, issues decided by the judge are "questions of law" appealable under this section, while issues decided by the jury are "questions of fact" and are not appealable. 85 H. 462, 946 P.2d 32 (1997).

As defendant's "motion to dismiss" following a jury verdict of guilty deemed post-verdict motion for judgment of acquittal following a jury verdict of guilty pursuant to HRPP rule 29(c), paragraph (9) authorized prosecution to assert appeal from this judgment of acquittal; thus, supreme court had appellate jurisdiction over appeal. 87 H. 108, 952 P.2d 865 (1997).

Double jeopardy clauses not violated by prosecution's appeal from judgment of acquittal following jury's verdict of guilty pursuant to paragraph (9). 87 H. 108, 952 P.2d 865 (1997).

Paragraph (1) permits prosecution to appeal from both dismissals with prejudice and without prejudice. 87 H. 260, 953 P.2d 1358 (1998).

Where trial court's order was an order of dismissal and not a judgment of acquittal, order was appealable under paragraph (1). 97 H. 505, 40 P.3d 907 (2002).

Paragraph (7) authorizes the prosecution to appeal orders suppressing evidence as illegally obtained, the intent of the statute being to facilitate the administration of justice in criminal cases by allowing the prosecution to obtain a conclusive ruling on issues involving searches, seizures, and confessions via direct appeal. 104 H. 224, 87 P.3d 893 (2004).

The language of paragraph (7), which allows the prosecution to appeal from "a pretrial order granting a motion for the suppression of evidence", includes within its scope the right to appeal from a trial court’s voluntariness determination mandated by §621-26. 104 H. 224, 87 P.3d 893 (2004).

As district family court proceedings under §571-11(1) concerning juvenile law violators are considered to be noncriminal proceedings, prosecution's appeal of family court order was not authorized by paragraph (7). 104 H. 403, 91 P.3d 485 (2004).

As the prosecution was not authorized to appeal the judge's pretrial discovery order under this section, the prosecution, as mandamus petitioner, would have been without a remedy unless extraordinary relief was granted; where trial judge did not exceed judge's authority under HRPP rule 16(d) by ordering the disclosure of the information on the laser unit calibration distances and locations in prosecution of defendant for speeding, petition for writ of mandamus was denied. 116 H. 23, 169 P.3d 975 (2007).

Where the case was a criminal matter filed by plaintiff State of Hawaii against defendant and the police department (HPD) was not a party to the case, HPD, as a nonparty, was not authorized to appeal the respondent judge's order denying HPD's motion to quash defendant's subpoena duces tecum pursuant to §641-11 if judgment was entered against defendant; HPD was also not authorized to appeal the order pursuant to the interlocutory appeal statute for defendants, §641-17, or the appeal statute for the prosecution under this section; thus, having no remedy by way of appeal, HPD properly sought redress from the order by mandamus. 122 H. 204, 225 P.3d 646 (2010).

Deferred acceptance of no contest plea not appealable until no contest plea accepted. 5 H. App. 357, 692 P.2d 1171 (1984).

Section is to be strictly construed. 7 H. App. 516, 782 P.2d 29 (1989).

Paragraph (9) did not preclude appellate court's jurisdiction over State's appeal where trial court's judgment of acquittal was "in form only and not in substance"; trial court made no factual determination as to some or all of the elements charged, but grounded its ruling on the conclusion that the charges were defective as a matter of law. 88 H. 477 (App.), 967 P.2d 674 (1998).

Cited: 37 H. 601, 603 (1947); 48 H. 247, 256, 397 P.2d 575 (1964).

" **§641-14 Stay in criminal cases.** (a) The filing of a notice of appeal or the giving of oral notice in open court at the time of sentence by the defendant or the defendant's counsel of intention to take an appeal may operate as a stay of execution and may suspend the operation of any sentence or order of probation, in the discretion of the trial court. If the court determines that a stay of execution is proper, the court

shall state the conditions under which the stay of execution is granted. No stay granted on the giving of oral notice shall be operative beyond the time within which an appeal may be taken; provided that if an appeal is properly filed, the stay shall continue in effect as if the stay was based on a filing of the appeal.

The court may revoke the stay of execution or amend the conditions thereof for a violation of the conditions of the stay of execution.

(b) Admission to bail after the giving of oral notice in open court of intention to take an appeal or upon an appeal shall be as provided in the rules of court. [L 1892, c 95, §7; RL 1925, §2528; am L 1925, c 211, §3; RL 1935, §3555; RL 1945, §9556; RL 1955, §212-6; HRS §641-16; am L 1972, c 89, pt of §5; ren HRS §641-14; am L 1978, c 225, §1; gen ch 1985]

" **[§641-15] Service.** Service of a copy of the notice of appeal shall be made upon the adverse party or the adverse party's attorney of record as provided by the rules of court. [L 1892, c 95, pt of §8; am L 1919, c 44, §7; RL 1925, §2530; RL 1935, §3557; RL 1945, §9558; RL 1955, §212-8; HRS §641-18; am L 1972, c 89, pt of §5; ren HRS §641-15; gen ch 1985]

" **§641-16 Judgment; no reversal when.** [(a)] The supreme court, or the intermediate appellate court, as the case may be, may affirm, reverse, or modify the order, judgment, or sentence of the trial court in a criminal matter. It may enter such order, judgment, or sentence, or may remand the case to the trial court for the entry of the same or for such other or further proceedings, as in its opinion the facts and law warrant. It may correct any error appearing on the record.

[(b)] In case of a conviction and sentence in a criminal case, if in its opinion the sentence is illegal or excessive it may correct the sentence to correspond with the verdict or finding or reduce the same, as the case may be. In case of a sentence to imprisonment for life not subject to parole, the court shall review the evidence to determine if the interests of justice require a new trial, whether the insufficiency of the evidence is alleged as error or not. Any order, judgment, or sentence entered by the court may be enforced by it or remitted for enforcement by the trial court.

[(c)] No order, judgment, or sentence shall be reversed or modified unless the court is of the opinion that error was committed which injuriously affected the substantial rights of the appellant. Nor shall there be a reversal in any criminal

case for any defect of form merely in any indictment or information or for any matter held for the benefit of the appellant or for any finding depending on the credibility of witnesses or the weight of the evidence. Except as otherwise provided by the rules of court, there shall be no reversal for any alleged error in the admission or rejection of evidence or the giving of or refusing to give an instruction to the jury unless such alleged error was made the subject of an objection noted at the time it was committed or brought to the attention of the court in another appropriate manner. [L 1892, c 95, §14; RL 1925, §2536; am L 1931, c 42, §2; RL 1935, §3563; RL 1945, §9564; RL 1955, §212-14; am L 1957, c 282, §2; HRS §641-24; am L 1972, c 89, pt of §5; ren HRS §641-16; am L 1979, c 111, §6(5)]

Rules of Court

Correction of sentence, see HRPP rule 35.
Exceptions unnecessary, see HRPP rule 51.
Harmless error, see HRPP rule 52.

Case Notes

Where defendant in a pretrial suppression hearing noted the defendant's objection to introduction of the defendant's inculpatory statement, the defendant's failure to object at trial to reception of the statement did not constitute waiver of the issue on appeal. 61 H. 499, 605 P.2d 935 (1980).

Circuit court's unlawful use of "struck jury" method to select jury was not plain error. 9 H. App. 578, 855 P.2d 34 (1993).

Because trial court did not apply appropriate sentencing standards to extended term motion and remand would allow circuit court to reconsider other sentencing alternatives in fashioning an appropriate sentence, modification of sentence was not warranted on appeal. 77 H. 340 (App.), 884 P.2d 403 (1994).

Modification of sentence on appeal warranted where district court, on resentencing, failed to take into account time defendant already served in prison, amount of fines paid, and community service completed. 82 H. 83 (App.), 919 P.2d 995 (1996).

Prejudicial error as requisite.

No reversal unless error prejudicial, 43 H. 119 (1959); 44 H. 10, 352 P.2d 320 (1959); 45 H. 295, 367 P.2d 499 (1961); 45 H. 457, 370 P.2d 468 (1962); 46 H. 127, 376 P.2d 125 (1962); 47 H. 185, 199, 389 P.2d 146 (1963); 49 H. 77, 102, 412 P.2d 669 (1966); 49 H. 116, 412 P.2d 662 (1966). Erroneous instruction presumptively harmful. 49 H. 327, 330, 417 P.2d 638 (1966).

Error that is harmless beyond a reasonable doubt does not mandate reversal of conviction. 57 H. 26, 548 P.2d 1402 (1976).

For earlier cases see notes to RLH 1955, §§210-1, 212-14.

Preservation of error as requisite.

Questions on appeal must have been raised below. 43 H. 299, 301 (1959); 44 H. 370, 355 P.2d 25 (1960); 45 H. 83, 88, 363 P.2d 964, 967 (1961); 46 H. 475, 485, 382 P.2d 920, 934 (1963); 49 H. 1, 406 P.2d 887 (1965); 49 H. 42, 45, 410 P.2d 976 (1966); 50 H. 253, 438 P.2d 401 (1968). But see as to fundamental error. 49 H. 504, 421 P.2d 305 (1966); 49 H. 522, 528, 423 P.2d 438 (1967); 50 H. 287, 439 P.2d 666 (1968). For earlier cases see notes to RLH 1955, §§208-3, 210-1, 212-1, 212-4, 212-8, 212-14. Though generally judgment will be reversed only on theory presented to trial court, there may be deviations when justice requires. 53 H. 45, 487 P.2d 1070 (1971). Court has power to notice plain errors not raised at trial if they affect substantial rights. Specific grounds for objection are required. 56 H. 343, 537 P.2d 724 (1975). Objection to admission of evidence is necessary; objection on specific ground is a waiver of all other objections. 57 H. 96, 550 P.2d 900 (1976).

Scope of review of factual issues.

Test on criminal appeals is whether verdict is supported by substantial evidence. 55 H. 1, 514 P.2d 373 (1973).

See notes to §635-56. Cited: 47 H. 472, 478, 391 P.2d 403 (1964), note 1.

" **§641-17 Interlocutory appeals from circuit courts, criminal matters.** Upon application made within the time provided by the rules of court, an appeal in a criminal matter may be allowed to a defendant from the circuit court to the intermediate appellate court, subject to chapter 602, from a decision denying a motion to dismiss or from other interlocutory orders, decisions, or judgments, whenever the judge in the judge's discretion may think the same advisable for a more speedy termination of the case. The refusal of the judge to allow an interlocutory appeal to the appellate court shall not be reviewable by any other court. [L 1892, c 57, §74; am L 1898, c 40, §2; am L 1903, c 32, §18; am L 1905, c 13, §1; RL 1925, §2515; RL 1935, §3530; RL 1945, §9531; RL 1955, §210-1; HRS §641-31; am L 1972, c 89, pt of §5; ren HRS §641-17; am L 1979, c 111, §6(6); gen ch 1985; am L 2004, c 202, §71; am L 2006, c 94, §1; am L 2010, c 109, §1]

Case Notes

This section is source of power to allow interlocutory appeal. 44 H. 613, 617, 359 P.2d 932 (1961).

Trial court shall carefully consider whether an interlocutory appeal will more speedily determine litigation, and set forth its reasons if it so concludes. 67 H. 510, 694 P.2d 388 (1985).

While trial court's permission generally required before bringing interlocutory appeal, not necessary where trial court denies pretrial motion to dismiss an indictment on double jeopardy grounds. 79 H. 461, 903 P.2d 1282 (1995).

Where defendant failed to file notice of interlocutory appeal within thirty days from the date the order appealed from was entered, as required by HRAP rule 4(b), defendant's appeal dismissed for lack of appellate jurisdiction. 88 H. 404, 967 P.2d 236 (1998).

Where the case was a criminal matter filed by plaintiff State of Hawaii against defendant and the police department (HPD) was not a party to the case, HPD, as a nonparty, was not authorized to appeal the respondent judge's order denying HPD's motion to quash defendant's subpoena duces tecum pursuant to §641-11 if judgment was entered against defendant; HPD was also not authorized to appeal the order pursuant to the interlocutory appeal statute for defendants under this section, or the appeal statute for the prosecution, §641-13; having no remedy by way of appeal, HPD properly sought redress from the order by mandamus. 122 H. 204, 225 P.3d 646 (2010).

Cited: 77 H. 351, 884 P.2d 729 (1994).

" **[§641-18] Time for appeal in case of suspended sentence.** Whenever in any criminal cause an order suspending the imposition or execution of the sentence is entered by a district or circuit court, the order shall for the purposes of appeal be deemed a final judgment and the time within which to perfect any appeal in any such cause shall commence to run from the entry thereof. [L 1941, c 66, §1; RL 1945, §9502; RL 1955, §208-2; HRS §641-41; am L 1970, c 188, §39; am L 1972, c 89, pt of §5; ren HRS §641-18]

Rules of Court

What constitutes judgment and entry of judgment, see HRPP rule 32(c).

"PART III. GENERAL PROVISIONS

[§641-31] Bonds, costs, failure to file or pay, defects. Failure of an appellant to file a bond or to pay costs, or informality or insufficiency of a bond or payment of costs, does not affect the validity of the appeal, but is ground only for such remedies as are specified by the rules of court or, when no remedy is specified, for such action as the court having jurisdiction deems appropriate, which may include dismissal of the appeal. [L 1895, c 25, §2; am L 1905, c 14, §1; RL 1925, §2538; RL 1935, §3506; RL 1945, §9508; am L Sp 1949, c 41, §1; RL 1955, §208-8; HRS §641-43; am L 1972, c 89, pt of §5; ren HRS §641-31]

Rules of Court

Bond on motion for new trial, see HRCP rule 62.

Case Notes

The effectiveness of a notice of appeal is not conditioned upon payment of costs. 57 H. 168, 552 P.2d 355 (1976).

" **[§641-32] Liability on bond, how enforced.** [(a)] By entering into a bond for costs or to stay the execution of any proceedings to enforce a judgment, the surety submits oneself to the jurisdiction of the court, irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond may be served, and agrees that the surety's liability may be enforced on motion without the necessity of an independent action.

[(b)] The papers served on the clerk as statutory agent for the surety shall be mailed by the clerk to the surety if the surety's address is known. [L 1895, c 25, §4; RL 1925, §2540; RL 1935, §3508; RL 1945, §9510; RL 1955, §208-10; HRS §641-45; am L 1972, c 89, pt of §5; ren HRS §641-32; gen ch 1993]