

**Electronically Filed
Supreme Court
SCPW-10-0000231
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NO. SCPW-10-0000231

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

BYRON SAY, Petitioner,

vs.

CIRCUIT COURT OF THE FIFTH CIRCUIT,
STATE OF HAWAI'I, Respondent.

ORIGINAL PROCEEDING
(CASE NO. SP 10-1-0024)

ORDER

(By: Recktenwald, C.J., Nakayama, Acoba, and Duffy, JJ.
and Circuit Judge Garibaldi, assigned by reason of vacancy)

Upon consideration of petitioner Byron Say's petition for a writ of mandamus and the papers in support, it appears that petitioner's September 28, 2010 "Motion to Compel [the circuit] Court to Answer [the May 17, 2010 petition]" was responded to by the circuit court, on October 13, 2010, by a memorandum from the legal documents branch. Accordingly, petitioner fails to demonstrate that the circuit court is not responding to the May 17, 2010 petition and that he is entitled to extraordinary relief. See Kema v. Gaddis, 91 Hawai'i 200, 204, 982 P.2d 334, 338 (1999) (A writ of mandamus is an extraordinary remedy that will not issue unless the petitioner demonstrates a clear and

indisputable right to relief and a lack of alternative means to redress adequately the alleged wrong or obtain the requested action.). Therefore,

IT IS HEREBY ORDERED that the clerk of the appellate court shall process the petition for a writ of mandamus without payment of the filing fee.

IT IS FURTHER ORDERED that the petition for a writ of mandamus is denied.

DATED: Honolulu, Hawai'i, January 6, 2011.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ James E. Duffy, Jr.

/s/ Colette Y. Garibaldi

