

**Electronically Filed
Supreme Court
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SCPW-12-0000831

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

MICHAEL C. TIERNEY,
Petitioner,

vs.

TED SAKAI, DIRECTOR OF PUBLIC SAFETY, STATE OF HAWAI‘I,
Respondent.

ORIGINAL PROCEEDING

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

(By: Recktenwald, C.J., Nakayama, Acoba, McKenna, and Pollack, JJ.)

Petitioner Michael C. Tierney submitted a petition for a writ of mandamus, which was filed on December 27, 2012.

Petitioner seeks an order directing Ted Sakai, the Director of the Department of Public Safety ("DPS"), State of Hawai‘i ("the State"), to "app[ro]ve dental treatment, teeth cleaning, root canal, cavity fix, cancer treatment and treatment for concussion for brain trauma." Upon consideration of the petition and the documents attached thereto and submitted in support thereof, it appears that petitioner is not entitled to mandamus relief.

Petitioner fails to demonstrate that DPS is purposefully ignoring or failing to respond to his dental or medical needs and the documents attached to the petition demonstrate that DPS has provided petitioner medical and dental care within the purview of

the State's services, has apprised petitioner of the option to seek outside care for services not covered by the State, and has offered services for pain relief, if necessary. 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); Barnett v. Broderick, 84 Hawai'i 109, 111, 929 P.2d 1359, 1361 (1996) (mandamus relief is available to compel an official to perform a duty allegedly owed to an individual only if the individual's claim is clear and certain, the official's duty is ministerial and so plainly prescribed as to be free from doubt, and no other remedy is available); Estelle v. Gamble, 429 U.S. 97, 104 (1976) (prison officials are prohibited from "unnecessarily and wantonly inflicting" pain on an inmate by acting with "deliberate indifference" toward the inmate's serious medical needs). Accordingly,

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

DATED: Honolulu, Hawai'i, January 24, 2013.

/s/ Mark E. Recktenwald
/s/ Paula A. Nakayama
/s/ Simeon R. Acoba, Jr.
/s/ Sabrina S. McKenna
/s/ Richard W. Pollack

