

NO. 25910

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

ZAHN BANDMANN,
Petitioner,

vs.

STATE OF HAWAII, CIRCUIT COURT OF THE FIFTH CIRCUIT,
Respondent.

ORIGINAL PROCEEDING

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon consideration of Petitioner Zahn Bandmann's petition for a writ of mandamus directed to the Circuit Court of the Fifth Circuit and the papers in support, it appears that: (1) on March 27, 2003, Petitioner received a Notice of Seizure For Forfeiture informing him that certain property was seized and subject to forfeiture and he is a party known to have an interest in the property; (2) thereafter, Petitioner submitted a motion to the Circuit Court of the Fifth Circuit to have the court declare the forfeiture excessive; (3) the court documents clerk and chief court administrator returned the motion to Petitioner explaining that there was no such case on record and that Petitioner should forward the document to the proper office for filing; (4) Petitioner now seeks a writ of mandamus directing the circuit court to file the motion; (5) 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 in nature and so plainly prescribed as to be free from doubt, and no other remedy is available. Barnett v. Broderick, 84 Hawai'i 109, 111, 929 P.2d 1359, 1361 (1996) (citing Azurin v. Von Raab, 803 F.2d 993 (9th Cir. 1986), cert. denied, 483 U.S. 1021 (1987)); (6) according to the documents submitted with the instant petition for a writ of mandamus, if Petitioner wants to challenge the forfeiture he must file the documents with the Department of the Attorney General as explained in the Notice of Intention to Administratively Forfeit Property; and (7) Petitioner fails to demonstrate that he is entitled to the relief requested. Therefore,

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

IT IS FURTHER ORDERED that: (1) the clerk of the court shall make copies of pages 64-81 of the record (the documents that Petitioner needs to challenge the forfeiture); (2) return the originals to Petitioner; and (3) place the copies in the record.

DATED: Honolulu, Hawai'i, July 9, 2003.