

NO. 25068

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

vs.

KEITH MURASKAS, Defendant-Appellant,

and

EDWARD WALLACE MARTIN, Defendant.

EMILIANO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

APPEAL FROM THE FIRST CIRCUIT COURT
(CR. NO. 99-0704)

ORDER

(By: Levinson, J., for the court¹)

Upon consideration of Defendant-Appellant's petition for writ of habeas corpus, petition for writ of mandamus, Rule 40 petition for post conviction relief, the affidavits in support, and the records and files herein, it appears that: (1) this matter involves an appeal from a judgment of conviction and sentence; (2) the appeal is fully briefed and assigned to the supreme court for disposition; (3) 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 the alleged wrong or obtain the requested relief; such writs are not intended to take the place of an appeal. State v. Hamili, 87 Hawai'i 102, 104, 952 P.2d 390, 392 (1998); (4) the rules of appellate procedure do not authorize the consideration of a petition for writ of mandamus in a pending appeal, and Appellant fails to demonstrate he is

¹ Considered by: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.

entitled to mandamus relief in the pending appeal; (5) HRS § 660-3 governs the filing of writs of habeas corpus and provides that a court may issue writs of habeas corpus in cases in which persons are unlawfully restrained of their liberty; (6) Appellant fails to demonstrate that he is unlawfully restrained of his liberty; (7) a petition for post conviction relief pursuant to HRPP Rule 40 cannot be filed without leave of the court, and Appellant presents no reason to grant him leave to file a Rule 40 petition during the pendency of this appeal. Therefore,

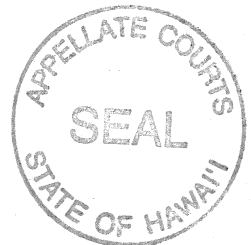
IT IS HEREBY ORDERED that the petition for writ of mandamus, the petition for writ of habeas corpus, and the HRPP Rule 40 petition are denied without prejudice to the court considering the points of error and arguments presented in Appellant's opening brief.

DATED: Honolulu, Hawai'i, September 16, 2005.

FOR THE COURT:



STEVEN H. LEVINSON
Associate Justice



Christopher Evans
for defendant-appellant
on the petitions