

NO. 29903

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

MICHAEL C. TIERNEY, Petitioner,

vs.

DISTRICT COURT OF THE FIRST CIRCUIT, STATE OF HAWAI'I,
HONOLULU DIVISION, Respondent.

ORIGINAL PROCEEDING
(CASE NO. 1P108-06561)

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

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

Upon consideration of petitioner Michael C. Tierney's petition for a writ of mandamus, it appears that the district court of the first circuit received from petitioner, on November 24, 2008, a letter and other papers. The letter, inter alia, instructed the district court to "Please file my Notice of Appeal." The letter's other papers were entitled "Notice of Appeal", "Affidavit in Support of Motion for Leave to Proceed on Appeal in Forma Pauperis", and "Motion for Appointment of Counsel on Appeal" (collectively "appeal papers"). The appeal papers were all captioned with district court Case No. 1P108-06561 and were all signed by petitioner and dated November 19, 2008. The district court filed petitioner's letter on November 24, 2008 and entered the letter on the docket of 1P108-06561. The district court placed the appeal papers in the file of 1P108-06561 as part of petitioner's letter filed on November 24, 2008. The district court did not file and process petitioner's appeal papers.

A writ of mandamus will issue where a petitioner demonstrates a clear and indisputable right to relief and a lack

CLERK OF THE SUPREME COURT
STATE OF HAWAII

2009 JUL -8 AM 10:38

FILED

of other means to redress adequately the alleged wrong or obtain the requested action. Kema v. Gaddis, 91 Hawai'i 200, 204, 982 P.2d 334, 338 (1999). Mandamus relief is available to compel an official to perform a duty allegedly owed to an individual 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. In Re Disciplinary Bd. of Hawaii Supreme Court, 91 Hawai'i 363, 368, 984 P.2d 688, 693 (1999), citing Barnett v. Broderick, 84 Hawai'i 109, 111, 929 P.2d 1359, 1361 (1996).

The filing and processing of petitioner's appeal papers are ministerial duties of the district court. Petitioner has an indisputable right to have his appeal papers filed and processed. The district court ignored petitioner's request to file his appeal papers. Petitioner has no remedy other than mandamus. Therefore,

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

IT IS FURTHER ORDERED that the petition for writ of mandamus is granted as follows:

1. The District Court of the First Circuit, Honolulu Division, shall forthwith: (i) file and process, in Case No. 1P108-06561, the papers entitled "Notice of Appeal", "Affidavit in Support of Motion for Leave to Appeal in Forma Pauperis", and "Motion for Appointment of Counsel on Appeal" that are part of the letter filed on November 24, 2008 in Case No. 1P108-06561;

(ii) serve petitioner with file-stamped copies of the papers; and
(iii) process the Notice of Appeal in accordance with HRAP 11(b).

2. The Notice of Appeal filed by the district court pursuant to paragraph 1 shall be deemed to have been filed on November 24, 2008 for purposes of HRAP 4(a)(1).

3. The district court shall file a copy of this order in Case No. 1P108-06561.

DATED: Honolulu, Hawai'i, July 8, 2009.

Pamela C. Robinson

James E. Duddy, Jr.

Mark E. Redmond