

**Electronically Filed
Supreme Court
SCPW-13-000095
21-FEB-2013
09:37 AM**

SCPW-13-000095

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

MICHAEL C. TIERNEY, Petitioner,

vs.

STATE OF HAWAI'I, Respondent.

ORIGINAL PROCEEDING
(S.P.P. No. 12-1-0011)

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

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

Petitioner Michael C. Tierney submitted a document to the court entitled "Motion for Appoin[t]ment of Counsel Demand by U.S. Supreme Court" in which he contends that all states must appoint counsel in post-conviction proceedings pursuant to the United States Supreme Court's decision in Martinez v. Ryan, 132 S. Ct. 1309 (Mar. 20, 2012). Upon consideration of the submission, which we file and review as a petition for a writ of mandamus, it appears that petitioner does not have a clear and indisputable right to the appointment of counsel in a post-conviction proceeding. See generally Engstrom v. Naauao, 51 Haw. 318, 321, 459 P.2d 376, 378 (1969). Petitioner fails to demonstrate his eligibility for appointed counsel and the

Martinez decision does not mandate the appointment of counsel. Tierney, therefore, is not entitled to mandamus relief. See Kema v. Gaddis, 91 Hawai'i 200, 204-05, 982 P.2d 334, 338-39 (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). Accordingly,

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

DATED: Honolulu, Hawai'i, February 21, 2013.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

