

**Electronically Filed
Supreme Court
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SCPW-13-0000130

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

MICHAEL C. TIERNEY, Petitioner,

vs.

STATE OF HAWAI'I, Respondent.

ORIGINAL PROCEEDING

ORDER

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

Upon consideration of petitioner Michael C. Tierney's "Motion for Release Pending Disposition of Post Conviction Petition Rule 40 [HRAP 23]", filed on March 4, 2013, which we review as a petition for a writ of mandamus, and the document attached thereto and submitted in support thereof, it appears that petitioner is not entitled to the requested relief. Petitioner fails to demonstrate that the State of Hawai'i owes him a duty to release him from custody and provide him gate money and clothes pending the disposition of his HRPP Rule 40 proceeding and petitioner has alternative means to seek relief. 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). 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, March 20, 2013.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

