

NO. 30612

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

MICHAEL C. TIERNEY, Petitioner,

vs.

THE HONORABLE RICHARD K. PERKINS, JUDGE OF THE CIRCUIT
COURT OF THE FIRST CIRCUIT, STATE OF HAWAI'I, Respondent.

ORIGINAL PROCEEDING
(S.P.P. No. 10-1-0018)

ORDER

(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 Hawai'i Rules of Penal Procedure (HRPP) Rule 40(c)(2) authorized respondent to treat petitioner's March 25, 2010 petition as a petition for post-conviction relief under HRPP Rule 40 and require petitioner to file a supplemental petition in the form of an HRPP Rule 40 petition for post-conviction relief. Unless and until such supplemental petition was filed, respondent was not obliged to hear or review the merits of the March 25, 2010 petition. Therefore, petitioner is not entitled to mandamus 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.). Accordingly,

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

DATED: Honolulu, Hawai'i, July 20, 2010.