

**Electronically Filed
Supreme Court
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SCPW-12-0001013

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

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

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

Petitioner Michael C. Tierney submitted a petition for a writ of mandamus, which was filed on November 16, 2012. Petitioner seeks an order from this court directing the Honorable Richard K. Perkins to conduct a hearing on his HRPP Rule 40 petition in S.P.P. No. 12-1-0011. Based upon our review of the petition for a writ of mandamus, the documents attached thereto and submitted in support thereof, and the record, it appears that petitioner is not entitled to mandamus relief. Although nearly five months have passed since the State of Hawai'i filed its answer to the HRPP Rule 40 petition, and although petitioner is entitled to a ruling thereon, the circuit court has not ruled on

the petition to date. At this time, therefore, the relief petitioner seeks is not subject to a writ of mandamus. 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, December 17, 2012.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

