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Supreme Court
SCPW-12-0000533
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NO. SCPW-12-0000533

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

MICHAEL 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. 12-1-0011)

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

(By: Recktenwald, C.J., Nakayama, Acoba, and McKenna, JJ.
and Circuit Judge Nakasone, assigned by reason of vacancy)

Upon consideration of petitioner Michael Tierney's petition for a writ of mandamus and the papers in support, it appears that the notice of appeal filed on May 7, 2012 in S.P.P. No. 12-1-0011 purports to appeal the dismissal of the HRPP Rule 40 petition, but no dismissal has occurred. The May 7, 2012 notice of appeal is not a valid notice of appeal and its filing did not transfer jurisdiction of S.P.P. No. 12-1-0011 from the circuit court to the appellate court. The respondent judge's May 17, 2012 decision to the contrary was incorrect. See State v. Ontiveros, 82 Hawai'i 446, 449, 923 P.2d 388, 391) ("Where the notice of appeal is jurisdictionally defective, filing the notice

does not transfer jurisdiction from the trial court to the appellate court."). Therefore,

IT IS HEREBY ORDERED that the answer provision of HRAP 21(c) is suspended pursuant to HRAP 2.

IT IS FURTHER ORDERED that the petition for a writ of mandamus is granted. The respondent judge shall proceed with S.P.P. No. 12-1-0011.

DATED: Honolulu, Hawai'i, June 14, 2012.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ Sabrina S. McKenna

/s/ Karen T. Nakasone

