

**Electronically Filed
Supreme Court
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SCPW-13-0000387

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. 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 petition for a writ of mandamus, which was filed on April 4, 2013. Petitioner seeks an order directing the respondent judge in his Rule 40 proceeding to "dismiss the charges with prejudice" and release him from custody. Based upon our review of the mandamus petition and the record, it appears that although petitioner is entitled to a ruling on his Rule 40 petition, which he is seeking to amend, petitioner does not have a clear and indisputable right to the mandamus relief he requests. 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, May 2, 2013.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

