

**Electronically Filed
Supreme Court
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SCPW-13-0005887

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

ROYCE C. GOUVEIA, Petitioner,

vs.

THE HONORABLE GLENN J. KIM, JUDGE OF THE FIRST CIRCUIT
COURT, Respondent Judge,

AND

STATE OF HAWAI'I, Respondent.

ORIGINAL PROCEEDING
(CR. NO. 12-1-1474)

ORDER DENYING WITHOUT PREJUDICE PETITION FOR WRIT OF MANDAMUS
(By: Recktenwald, C.J., Nakayama, McKenna, and Pollack, JJ., and
Circuit Judge Crandall, assigned by reason of vacancy.)

Upon consideration of petitioner Royce C. Gouveia's petition for a writ of mandamus, filed on December 5, 2013, the documents attached thereto and submitted in support thereof, and the record, it appears that petitioner has filed an appeal in the Intermediate Court of Appeals (CAAP-14-0000358) concerning, in part, the circuit court's finding of "manifest necessity" in granting the State of Hawai'i's oral motion for a mistrial.

Petitioner fails to demonstrate that he has a clear and indisputable right to receive the jury's September 6, 2013 verdict and that he lacks alternative means to seek relief. Petitioner, therefore, is not entitled to a writ of mandamus. See Kema v. Gaddis, 91 Hawai'i 200, 204-05, 982 P.2d 334, 338-39 (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; where a court has discretion to act, mandamus will not lie to interfere with or control the exercise of that discretion, even when the judge has acted erroneously, unless the judge has exceeded his or her jurisdiction, has committed a flagrant and manifest abuse of discretion, or has refused to act on a subject properly before the court under circumstances in which the court has a legal duty to act). Accordingly,

IT IS HEREBY ORDERED that the petition for a writ of mandamus is denied without prejudice to petitioner raising the issues in his pending appeal.

DATED: Honolulu, Hawai'i, April 4, 2014.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Virginia L. Crandall

