

NO. 29765

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

MICHAEL C. TIERNEY, Petitioner,

vs.

CLAYTON FRANK, DIRECTOR, DEPARTMENT OF PUBLIC SAFETY,
STATE OF HAWAI'I, Respondent.

ORIGINAL PROCEEDING
(CR. NO. 08-1-0869)

ORDER

(By: Moon, C.J., Nakayama, Acoba, Duffy, and Recktenwald, JJ.)

Upon consideration of petitioner Michael C. Tierney's January 27, 2010 "motion for release of prisoner pending disposition of application for habeas corpus," it appears that petitioner's April 15, 2009 petition for a writ of habeas corpus is not pending before the supreme court in the instant case inasmuch as the petition was disposed by the April 22, 2009 order denying the petition without prejudice to seeking habeas corpus relief in the circuit court. The fact that petitioner subsequently sought and was denied habeas corpus relief in the circuit court did not reinstate petitioner's April 15, 2009 petition for a writ of habeas corpus in the instant case. Therefore,

IT IS HEREBY ORDERED that the "motion for release of prisoner pending disposition of application for habeas corpus" is dismissed. The dismissal is without prejudice to seeking release pending appeal from the circuit court in Cr. No. 08-1-0869 and

from the intermediate court of appeals in No. 29993 pursuant to HRAP 9(b).

DATED: Honolulu, Hawai'i, February 1, 2010.