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Supreme Court
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NO. SCPW-12-0000799

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

MICHAEL C. TIERNEY, Petitioner,

vs.

TED SAKAI, INTERIM DIRECTOR, DEPARTMENT OF PUBLIC SAFETY, STATE OF HAWAI‘I; SHARI KIMOTO; and JEANETTE BALTERO, Respondents.

ORIGINAL PROCEEDING

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

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

Upon consideration of Michael C. Tierney’s September 19, 2012 petition for a writ of mandamus and the document submitted in support thereof and attached thereto, it appears that petitioner fails to demonstrate a clear and indisputable right to return to Hawai‘i to serve the remainder of his sentence. See Malahoff v. Saito, 111 Hawai‘i 168, 191, 140 P.3d 401, 424 (2006) (the term “shall” in a statute may be construed as directory rather than mandatory); Jack Endo Elec., Inc. v. Lear Siegler, Inc., 59 Haw. 612, 617, 585 P.2d 1265, 1269 (1978) (same). Petitioner, therefore, is not entitled to mandamus relief. 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.

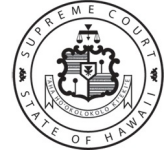
DATED: Honolulu, Hawai'i, October 9, 2012.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack



DISSENT BY ACOBA, J.

I dissent to the denial of Petitioner Michael C. Tierney's petition for a writ of mandamus (Petition). I would require Respondents Ted Sakai, Director of the Department of Public Safety (DPS), Shari Kimoto, the mainland branch manager for DPS, and Jeanette Baltero, the contract monitor for DPS to file an answer to the Petition.

/s/ Simeon R. Acoba, Jr.