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Supreme Court
SCPW-11-0000042
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NO. SCPW-11-0000042

IN THE SUPREME COURT OF THE STATE OF HAWAII

MICHAEL C. TIERNEY, Petitioner,

vs.

THE HONORABLE RICHARD K. PERKINS, JUDGE OF THE CIRCUIT
COURT OF THE FIRST CIRCUIT, STATE OF HAWAII, Respondent.

ORIGINAL PROCEEDING
(CR. NOS. 88-2209 and 89-0024)

ORDER

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

Upon consideration of petitioner Michael C. Tierney's petition for a writ of mandamus, it appears that petitioner's notice of appeal, dated January 3, 2011, was not "denied" by the respondent judge, but was filed by the circuit court on January 10, 2011 and is being processed in the intermediate court of appeals as appeal No. CAAP-11-0000016. It further appears that a motion for waiver of appellate fees for No. CAAP-11-0000016 must be made in the appellate court, not the circuit court. See HRAP 24(a) ("A party to an action in the circuit . . . court who desires to proceed on appeal in forma pauperis shall file in the appellate court a motion for leave to so proceed[.]"). Therefore, petitioner 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 clerk of the appellate court shall process the petition for a writ of mandamus without payment of the filing fee.

IT IS FURTHER ORDERED that the petition for a writ of mandamus is denied without prejudice to petitioner filing, in the intermediate court of appeals, in No. CAAP-11-0000016, a motion to proceed on appeal in forma pauperis pursuant to HRAP 24(a).

DATED: Honolulu, Hawai'i, February 8, 2011.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ James E. Duffy, Jr.

/s/ Virginia L. Crandall

