

**Electronically Filed
Supreme Court
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NO. SCPW-11-0001091

IN THE SUPREME COURT OF THE STATE OF HAWAII

MICHAEL C. TIERNEY, Petitioner,

vs.

DISTRICT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII,
Respondent.

ORIGINAL PROCEEDING

ORDER

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

Upon consideration of petitioner Michael C. Tierney's petition for a writ of mandamus and the papers in support, it appears that petitioner claims that the district court neglected to file a notice of appeal that petitioner submitted for filing in 1998 in Case No. Case No. 98306130. Petitioner provides no evidence in support of his claim and fails to demonstrate a clear and indisputable right to relief. Therefore, petitioner is not entitled to mandamus relief. See HRS § 602-5(3) (2010) ("The supreme court shall have jurisdiction and power . . . [t]o exercise original jurisdiction in all questions . . . arising under writs of mandamus directed to public officers to compel

them to fulfill the duties of their offices[.]”); In re Disciplinary Bd. of Hawaii Supreme Court, 91 Hawai‘i 363, 368, 984 P.2d 688, 693 (1999) (Mandamus relief is available to compel an official to perform a duty allegedly owed to an individual only if the individual’s claim is clear and certain, the official’s duty is ministerial and so plainly prescribed as to be free from doubt, and no other remedy is available.).

Accordingly,

IT IS HEREBY ORDERED that the clerk of the appellate court shall process the petition for writ of mandamus without payment of the filing fee.

IT IS FURTHER ORDERED that the petition for a writ of mandamus is denied.

DATED: Honolulu, Hawai‘i, January 25, 2012.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ James E. Duffy, Jr.

/s/ Sabrina S. McKenna

