

**Electronically Filed
Supreme Court
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SCPW-13-0000186

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

ROBERT SMITH, JR., Petitioner,

vs.

THE HON. GREG K. NAKAMURA, JUDGE,
CIRCUIT COURT OF THE THIRD CIRCUIT, Respondent Judge

and

STATE OF HAWAI'I, Respondent.

ORIGINAL PROCEEDING
(CR. NO. 12-1-00463)

ORDER DENYING WITHOUT PREJUDICE PETITION FOR WRIT OF MANDAMUS
(By: Recktenwald, C.J., Nakayama, Acoba, McKenna, and Pollack, JJ.)

Upon consideration of petitioner Robert Smith, Jr.'s petition for a writ of mandamus, filed on March 15, 2013, the documents attached thereto and submitted in support thereof, and the record, the February 8, 2013 bail condition order does not appear to provide a mechanism by which the random testing condition can be immediately enforced against petitioner without a further order of the court. Additionally, petitioner did not directly challenge by motion the February 8, 2013 bail condition

order in the circuit court. Petitioner, therefore, is not entitled to mandamus relief at this time. 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 he or she has a legal duty to act). Accordingly,

IT IS HEREBY ORDERED that the petition for a writ of mandamus and request for attorneys' fees and costs are denied without prejudice.

DATED: Honolulu, Hawai'i, April 24, 2013.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

