

**Electronically Filed
Supreme Court
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SCPW-13-0000050

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

RICHARD RUH, Petitioner,

vs.

INTERMEDIATE COURT OF APPEALS, Respondent.

ORIGINAL PROCEEDING
(CAAP-12-0001021; S.P.P. NO. 12-1-0003(2))

ORDER DENYING PETITION FOR WRIT OF MANDAMUS
(By: Recktenwald, C.J., Nakayama, Acoba, McKenna, and Pollack, JJ.)

Upon consideration of petitioner Richard Ruh's petition for a writ of mandamus, which was filed on January 28, 2013, the documents attached thereto and submitted in support thereof, and the record, it appears that petitioner does not have a clear and indisputable right to the appointment of counsel for an appeal in a post-conviction proceeding. Moreover, petitioner fails to demonstrate that the ICA exceeded its jurisdiction in denying his request for the appointment of counsel, committed a flagrant and manifest abuse of discretion in doing so, or has refused to act on a subject properly before the court under circumstances in which the court has a legal duty to act. Petitioner, therefore,

is not entitled to a writ of mandamus. 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 court has acted erroneously, unless the court has exceeded its 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 it has a legal duty to act). 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 HEREBY FURTHER ORDERED that the petition for a writ of mandamus is denied.

DATED: Honolulu, Hawai'i, February 14, 2013.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

