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Supreme Court
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SCPW-18-0000415

IN THE SUPREME COURT OF THE STATE OF HAWAII

PATRICK PRESCOTT, Petitioner,

vs.

THE HONORABLE FA'AUUGA TO'OTO'O, JUDGE OF THE CIRCUIT COURT
OF THE FIRST CIRCUIT, STATE OF HAWAII, Respondent Judge,

and

STATE OF HAWAII, Respondent.

ORIGINAL PROCEEDING
(S.P.P. NO. 14-1-1836-08)

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

Upon consideration of petitioner Patrick Prescott's petition for writ of mandamus, filed on May 17, 2018, and the record, it appears that although the petition was filed almost nine months ago, there is no showing that the petition was served on the State of Hawai'i ("State") or that petitioner is unable to effect prompt service of the petition on the State in order to trigger a response to the petition. See HRPP Rules 40(d), (f), and (g). Thus, petitioner fails to demonstrate that he has a clear and indisputable right to the requested relief or a lack of alternative means to seek relief at this time. 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; rather, it is meant to restrain a judge of an inferior court who 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 clerk of the appellate court shall process the petition for writ of mandamus without payment of the filing fee.

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

DATED: Honolulu, Hawai'i, May 30, 2018.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

