

**Electronically Filed
Supreme Court
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SCPW-24-0000392

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

DONALD MARKS, Petitioner,

vs.

STATE OF HAWAI‘I, Respondent.

ORIGINAL PROCEEDING
(CASE NO. 1CPN-21-0000002)

ORDER DENYING PETITION WITHOUT PREJUDICE

(By: Recktenwald, C.J., McKenna, Eddins, and Ginoza, JJ.,
and Circuit Judge Castagnetti, in place of Devens, J., recused)

Upon consideration of a letter filed on May 29, 2024, which we construe as a petition for writ of mandamus, and the record, Petitioner has a pending appeal before the Intermediate Court of Appeals (ICA) in CAAP-23-0000737 that seeks review of the circuit court’s decision that denied Petitioner’s Hawai‘i Rules of Penal Procedure Rule 40 petition for post-conviction relief. Petitioner also has a motion for appointment of counsel before the ICA in the same appeal. An extraordinary writ is not intended to be used to interfere with or control the ICA’s

decision on the merits of the appeal or a motion. See Womble Bond Dickinson (US) LLP v. Kim, 153 Hawai'i 307, 319, 537 P.3d 1154, 1166 (2023).

It is ordered that the petition is denied without prejudice to consideration by the ICA. The same letter was filed in CAAP-23-0000737.

DATED: Honolulu, Hawai'i, August 15, 2024.

/s/ Mark E. Recktenwald

/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

/s/ Lisa M. Ginoza

/s/ Jeannette H. Castagnetti

