

NO. 29056

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

DE MONT R. D. CONNER, Petitioner,

vs.

CLAYTON FRANK, DIRECTOR OF THE DEPARTMENT
OF PUBLIC SAFETY, STATE OF HAWAI'I, Respondent

EM. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2008 MAR 14 PM 1:46

FILED

ORIGINAL PROCEEDING

ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon consideration of the petition for a writ of mandamus filed by petitioner De Mont Conner and the papers in support, it appears that HRS § 353-16.2 (Supp. 2007) authorized the respondent director of public safety to transfer petitioner to an out-of-state correctional institution. The transfer was not prohibited by HRAP 23(a) inasmuch as (1) HRAP 23 applies to a habeas corpus proceeding initiated in the supreme court pursuant to HRS § 660-3 (1993) and (2) petitioner's proceeding in appellate court No. 28240 is an appeal to the intermediate court of appeals, filed pursuant to HRS §§ 641-1(a) and 641-11 (Supp. 2007), of a habeas corpus proceeding initiated in the circuit court pursuant to HRPP Rule 40. Therefore, petitioner is not entitled to mandamus relief. See In Re Disciplinary Bd. of Hawaii Supreme Court, 91 Hawai'i 363, 984 P.2d 688 (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,

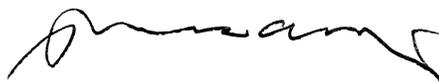
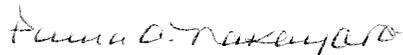
IT IS HEREBY ORDERED that the clerk of the appellate court shall remove the petition for a writ of mandamus from appellate court No. 28240 and process it as an original proceeding without payment of the filing fee.

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

DATED: Honolulu, Hawai'i, March 14, 2008.



Steven H. Levinson



James E. Dobby, Jr.