

NO. 29099

IN THE SUPREME COURT OF THE STATE OF HAWAII

KEITH MURAUSKAS, Petitioner,

vs.

DISTRICT COURT OF THE FIRST CIRCUIT,
HONOLULU DIVISION, Respondent.

CLERK, APPELLATE COURTS
STATE OF HAWAII
NORMA T. YARA

2008 APR 24 PM 4:05

FILED

ORIGINAL PROCEEDING
(CIVIL NO. 1RC06-1-5037)

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

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

Upon consideration of petitioner Keith Murauskas's petition for a writ of mandamus and the papers in support, it appears that petitioner -- an inmate in a mainland correctional facility and plaintiff *pro se* in district court Civil No. 1RC06-1-5037 -- has been attempting to appeal from certain district court rulings in Civil No. 1RC06-1-5037 by a notice of appeal dated September 10, 2007. The notice of appeal was filed by the district court on September 28, 2007, but was stricken upon filing as improper in form because it was a notice of appeal for Civil No. 1RC06-1-5037 and for Civil No. 1RC06-1-5038 which, unbeknownst to petitioner, had been transferred to circuit court on September 6, 2007. The district court returned the stricken notice of appeal to petitioner on October 16, 2007, with instructions to submit a "separate" notice of appeal for Civil No. 1RC06-1-5037 only. Petitioner prepared a "separate" notice of appeal for Civil No. 1RC06-1-5037 by blackening out the case number for Civil No. 1RC06-1-5038 on the stricken notice of appeal. Petitioner resubmitted the altered stricken notice of

appeal to the district court via mail of October 21, 2007, with an explanation and a request to file the document as a "separate" notice of appeal for Civil No. 1RC06-1-5037. To date, the resubmitted notice of appeal has not been filed.

A writ of mandamus will issue where a petitioner demonstrates a clear and indisputable right to relief and a lack of other means to redress adequately the alleged wrong or obtain the requested action. Kema v. Gaddis, 91 Hawai'i 200, 204, 982 P.2d 334, 338 (1999). Mandamus relief is available to compel an official to perform a duty allegedly owed to an individual 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. In Re Disciplinary Bd. of Hawaii Supreme Court, 91 Hawai'i 363, 368, 984 P.2d 688, 693 (1999), citing Barnett v. Broderick, 84 Hawai'i 109, 111, 929 P.2d 1359, 1361 (1996).

Petitioner has an indisputable right to have his September 10, 2007 notice of appeal filed and processed in a timely manner, notwithstanding its form. Cf. DCRCP 5(e) ("Any other rule to the contrary notwithstanding, the clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form[.]"); HRAP 3(c)(2) ("An appeal shall not be dismissed for informality of form or title of the notice of appeal."). The filing and processing of petitioner's September 10, 2007 notice of appeal has been delayed for seven months and petitioner has no alternative to the instant petition. 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 FURTHER ORDERED that the petition for writ of mandamus is granted as follows:



1. The clerk of the appellate court shall forthwith transmit to the clerk of the District Court of the First Circuit, Honolulu Division, a copy of the papers ("Notice of Appeal" and "Motion Pursuant to Hawaii Rules of Appellate Procedure, Rules 3(e)(2); 10(f)") attached as Exhibit A to the petition.

2. The clerk of the District Court of the First Circuit, Honolulu Division, upon receipt of the aforementioned papers, shall forthwith file the papers in Civil No. 1RC06-1-5037 without payment of filing fees, serve petitioner with file-stamped copies of the papers, and process the notice of appeal in accordance with HRAP 11(b).

3. The notice of appeal filed by the clerk of the district court pursuant to paragraph 2 shall be deemed to have been filed on September 28, 2007 for purposes of HRAP 4(a)(1).

4. The clerk of the district court shall file a copy of this order in Civil No. 1RC06-1-5037.

DATED: Honolulu, Hawai'i, April 24, 2008.


Anna C. Nakagawa

Kamea E. Duggan, Jr.