

NO. 29186

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Petitioner,

vs.

THE HONORABLE MICHAEL A. TOWN, JUDGE OF THE  
CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAI'I,  
and ERNIE GOMEZ, Respondents.

K. HANAKA'DO  
CLERK, APPELLATE COURTS  
STATE OF HAWAI'I

2008 JUN 13 PM 2:20

FILED

ORIGINAL PROCEEDING  
(CR. NO. 04-1-1136)

ORDER

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

Upon consideration of the petition for a writ of mandamus filed by petitioner State of Hawai'i and the papers in support, it appears that the respondent judge had the inherent power to stay execution of the mittimus pending the disposition of the application for pardon and the stay of execution was not a flagrant and manifest abuse of discretion. See Hawai'i Constitution, article VI, section 1; HRS § 603-21.9(6) (1993). Therefore, petitioner is not entitled to mandamus relief. See State ex rel. Marsland v. Ames, 71 Haw. 304, 306-07, 788 P.2d 1281, 1283 (1990) (The extraordinary writ of mandamus is appropriate to confine an inferior tribunal to the lawful exercise of its proper jurisdiction. Where the trial judge has discretion to act, mandamus will not lie to interfere with or control the exercise of that discretion, even where the judge has acted erroneously, unless the judge 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 where it was under a legal duty to act.). Accordingly,

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

DATED: Honolulu, Hawai'i, June 13, 2008.

Steven L. Johnson

Anna C. ...

Karen E. ...