

NO. 29355

IN THE SUPREME COURT OF THE STATE OF HAWAII

MICHAEL C. TIERNEY, Petitioner,

vs.

DISTRICT COURT OF THE FIFTH CIRCUIT, STATE OF HAWAII,
Respondent.

E.M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2008 OCT -6 PM 2:57

FILED

ORIGINAL PROCEEDING

(CR. NOS. 5P108-886, 0504068K, A0504068K, and B0504068K)

ORDER

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

Upon consideration of petitioner Michael C. Tierney's petition for a writ of mandamus and the papers in support, it appears that petitioner posted cash bail of \$750.00 in district court Cr. Nos. 5P108-886, 0504068K, A0504068K, and B0504068K. The district court forfeited the bail on June 4, 2008 and notified petitioner that

pursuant to HRS § 804-51 [Supp. 2007], the Court shall execute upon the judgment of forfeiture unless, within thirty (30) days of the date that this notice is received, a Motion or Application is filed with the Court showing good cause why execution should not issue upon the judgment. Upon timely filing of such motion or application, a hearing will be held thereon and the Court will determine if the judgment of forfeiture should be vacated.

The district court's notice of forfeiture was received by petitioner on June 19, 2008. Twenty-seven days later, on July 16, 2008, petitioner filed a "motion to return bail bond," which the district court calendared for hearing on August 14, 2008. On July 29, 2008, the district court, without a hearing and in petitioner's absence, ordered the final forfeiture of

petitioner's bail. On August 14, 2008, the district court, in petitioner's absence, dismissed petitioner's cases in Cr. Nos. 5P108-886, 0504068K, A0504068K, and B0504068K and determined that the dismissal mooted petitioner's July 16, 2008 "motion to return bail bond."

A writ of mandamus will issue where a 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. Kema v. Gaddis, 91 Hawai'i 200, 204, 982 P.2d 334, 338 (1999). Mandamus relief is available when a court has refused to act on a subject properly before the court under circumstances in which it has a legal duty to act. Id. 91 Hawai'i 204-205, 982 P.2d at 338-339.

Petitioner's July 16, 2008 "motion to return bail bond" -- filed within thirty days after petitioner received the district court's notice of forfeiture -- appears to have been a timely motion under HRS § 804-51 to set aside the bail forfeiture in Cr. Nos. 5P108-886, 0504068K, A0504068K, and B0504068K. The motion was properly before the district court, in which case HRS § 804-51 required the district court to hold a hearing on the motion, to sustain or overrule the motion, and to vacate or execute the forfeiture. See HRS § 804-51. Cr. Nos. 5P108-886, 0504068K, A0504068K, and B0504068K have been dismissed and petitioner has no alternative to the instant petition. Accordingly,

IT IS HEREBY ORDERED that the petition for a writ of mandamus is granted as follows:

The district court of the fifth circuit shall forthwith: (1) hold a hearing in Cr. Nos. 5P108-886, 0504068K, A0504068K, and B0504068K on defendant Michael C. Tierney's "motion to return bail bond" filed on July 16, 2008; and (2) either sustain the motion and vacate the July 29, 2008 final forfeiture of bail or overrule the motion and affirm the July 29, 2008 final forfeiture of bail.

DATED: Honolulu, Hawai'i, October 6, 2008.



Steven H. Larson

Funa C. Takayama



James E. Dally, Jr.