

NO. 29459

IN THE SUPREME COURT OF THE STATE OF HAWAII

ZACHARY CHINCIO, Petitioner,

vs.

CIRCUIT COURT OF THE FIRST CIRCUIT, Respondent

K. HAMAKAHO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2008 NOV 12 AM 10:51

FILED

ORIGINAL PROCEEDING

ORDER

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

Upon consideration of Zachary Chincio's papers dated October 19, 2008, which are deemed a petition for a writ of mandamus, it appears that petitioner can seek relief from his conviction in Cr. No. 00-1-2483 by filing a petition for post-conviction relief in the circuit court pursuant to Hawai'i Rules of Penal Procedure Rule 40. Therefore, petitioner is not entitled to mandamus relief. See Kema v. Gaddis, 91 Hawai'i 200, 204, 982 P.2d 334, 338 (1999) (A writ of mandamus is an extraordinary remedy that will not issue unless the 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.). Accordingly,

IT IS HEREBY ORDERED that the clerk of the appellate court shall file the petition for a writ of mandamus without payment of the filing fee.

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

DATED: Honolulu, Hawai'i, November 12, 2008.