

NO. 29599

IN THE SUPREME COURT OF THE STATE OF HAWAII

EUGENE KOSTRON, Petitioner,

vs.

THE HONORABLE RICHARD K. PERKINS, JUDGE OF THE CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII, Respondent.

ORIGINAL PROCEEDING
(CR. NO. 07-1-1510)

ORDER

(By: Moon, C.J., Nakayama, Acoba, and Duffy,
and Intermediate Court of Appeals Judge Fujii
assigned by reason of vacancy)

Upon consideration of the petition for a writ of mandamus filed by petitioner Eugene Kostron and the papers in support, it appears that the respondent judge's decision to dismiss Cr. No. 07-1-1510 with prejudice was announced on August 25, 2008 and reduced to a written order filed on October 29, 2008 (dismissal order). The August 25, 2008 decision was subject to a motion for reconsideration filed on October 28, 2008 with a hearing date before the respondent judge on December 10, 2008. The dismissal order was filed after the filing of the motion for reconsideration and during the pendency of such motion. The filing of the dismissal order on October 29, 2008 did not terminate the proceedings in Cr. No. 07-1-1510 inasmuch as the motion for reconsideration remained to be heard on December 10, 2008. The filing of the dismissal order after the filing of the motion for reconsideration and during the pendency of such motion did not divest the respondent judge of jurisdiction to hear the motion for reconsideration. The

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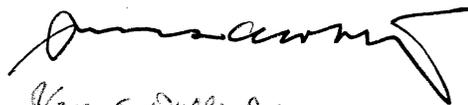
respondent judge had inherent power to reconsider the August 25, 2008 decision. See HRS § 603-21.9(6) (1993); Kawamata Farms v. United Agri Products, 86 Hawai'i 214, 242, 948 P.2d 1055, 1083 (1997). The granting of the motion for reconsideration was not a flagrant and manifest abuse of discretion. Thus, petitioner is not entitled to mandamus relief. See Kema v. Gaddis, 91 Hawai'i 200, 204-05, 982 P.2d 334, 338-39 (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. Where a court has discretion to act, mandamus will not lie to interfere with or control the exercise of that discretion, even when 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 under circumstances in which it has a legal duty to act.). Accordingly,

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

DATED: Honolulu, Hawai'i, February 4, 2009.



Puna A. Nakamura



Kama E. Duffley, Jr.

