

Electronically Filed
Supreme Court
SCPW-12-0000911
30-OCT-2012
11:34 AM

No. SCPW-12-0000911

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

SHAYLENE ISERI-CARVALHO,
PROSECUTING ATTORNEY,
COUNTY OF KAUAI, STATE OF
HAWAII

Petitioner,

vs.

KATHLEEN N. A. WATANABE,
CIRCUIT COURT JUDGE, FIFTH
JUDICIAL CIRCUIT,

Respondent.

SCPW-12-0000911
(Original Proceeding)

THE HONORABLE KATHLEEN N. A. WATANABE'S ANSWER TO PETITIONER
SHAYLENE ISERI-CARVALHO'S PETITION FOR WRIT OF MANDAMUS

DECLARATION OF THE HONORABLE KATHLEEN N.A. WATANABE

CERTIFICATE OF SERVICE

DAVID M. LOUIE 2162
Attorney General of Hawai'i

DIANE ERICKSON 1589
ROBYN B. CHUN 3661
Deputy Attorneys General
425 Queen Street
Honolulu, Hawai'i 96813
Telephone: (808) 586-0618

Attorneys for Respondent
The Honorable Kathleen N.A. Watanabe

THE HONORABLE KATHLEEN N.A. WATANABE'S ANSWER TO PETITIONER
SHAYLENE ISERI-CARVALHO'S PETITION FOR WRIT OF MANDAMUS

Pursuant to the Order issued herein by the Hawaii Supreme Court on October 29, 2012, the Honorable Kathleen N. A. Watanabe submits this Answer to the Petition for Writ of Mandamus filed by Petitioner, Shaylene Iseri-Carvalho, Prosecuting Attorney, County of Kauai ("Petition").

This Petition arises out of a Grand Jury session that was held in the Fifth Circuit Court on Thursday, October 25, recessed at 12:30 p.m., and continued over to Friday, October 26, 2012. This continued session was without court approval, and at the request of the Prosecuting Attorney, who was not prepared to proceed, as scheduled. The Prosecuting Attorney concluded her presentation of the evidence for the final case on Friday afternoon and given the unanticipated continued session and other judicial obligations, Judge Watanabe had a short window of time that day when she could take the return. See Declaration of the Honorable Kathleen N.A. Watanabe attached hereto and incorporated herein by reference. However, the Grand Jury was unable to return within that time period and the return had to be scheduled for another time. Id. At no time, however, did Judge Watanabe refuse to take the return or state that she was unwilling to bring back the Grand Jury foreperson, the Grand Jury secretary and the Grand Jury counsel because of the attendant cost or any other reason; to the contrary, Judge Watanabe advised the deputy prosecutor she would address the issue when presented with the appropriate motion. Id.

In her Petition, the Prosecuting Attorney contends that "Judge Watanabe's refusal to schedule the return on the Grand Jury session coupled with the public release of confidential information regarding the Grand Jury proceeding created a critical issue of public safety." See Petition at 4-5. The Prosecuting Attorney further contends that "[s]ince no case was initiated

because of Judge Watanabe's refusal to take the return on the October 26, 2012 session, there appears to be no valid motion that can be filed by the State that the Judge could act upon as she requested." Id. at 5. Judge Watanabe respectfully disagrees and asks that the Petition be denied.

As this Court has held,

[a] writ of mandamus and/or prohibition is an extraordinary remedy that will not issue unless the petitioner demonstrates a clear and indisputable right to the relief requested and a lack of other means to redress adequately the alleged wrong or to obtain the requested action. Straub Clinic & Hospital v. Kochi, 81 Hawaii 410, 414, 917 P.2d 1284, 1288 (1996). Such writs are not meant to supersede the legal discretionary authority of the lower court, nor are they meant to serve as legal remedies in lieu of normal appellate procedures. Id.

Kema v. Gaddis, 91 Haw. 200, 205, 982 P.2d 334, 338 (1999). Thus, to obtain a writ of mandamus or writ of prohibition, the petitioner must show both an "indisputable" right to the relief requested and that there is no alternative means to obtain that relief.

Further,

the mere fact that other remedies are not available has never in itself been sufficient justification for mandamus. And where . . . the trial judge has discretion act, mandamus clearly 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 jurisdiction, has committed a flagrant and manifest abuse of discretion, or has refused to act on a subject properly before the court where it has a legal duty to act.

State v. Lo, 116 Haw. 23, 26, 169 P.3d 975, 978 (2007) quoting State ex rel Marsland v. Ames, 71 Haw. 304, 306, 788 P.2d 1281, 1283 (1990).

Here, the Petitioner has failed to meet the requisite two part test. The Petitioner does not have an "indisputable right" to have the court immediately convene in order to receive the return from the Grand Jury nor has Petitioner shown that she had no alternative means to obtain the relief she seeks. To the contrary, Judge Watanabe properly exercised her discretion

and suggested that the Deputy Prosecutor file a motion seeking the requisite relief and the court would immediately address the issue. See Declaration of the Honorable Kathleen N. A. Watanabe attached hereto.

Additionally, by obtaining an arrest warrant on October 26, 2012 from a District Court Judge, the Prosecutor initiated the alternative means of proceeding with a preliminary hearing.

Accordingly, Judge Watanabe respectfully asks that the Petition for Writ of Mandamus be denied.

DATED: Honolulu, Hawaii, October 30, 2012.

DAVID M. LOUIE
Attorney General

/s/Robyn B. Chun
DIANE ERICKSON
ROBYN B. CHUN
Deputy Attorneys General

Attorneys for Respondent
The Honorable Kathleen N.A. Watanabe

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WATANABE, Circuit Judge, Fifth
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DECLARATION OF THE HONORABLE KATHLEEN N.A. WATANABE

Pursuant to Rule 52, Rules of Appellate Procedure, I, KATHLEEN N.A.

WATANABE, declare:

1. I am a judge in the Circuit Court of the Fifth Circuit for the State of Hawaii.
2. I make this declaration based on my personal knowledge and am competent to testify as to the matters set forth herein.
3. The Grand Jury for the Fifth Circuit was scheduled to meet on Thursday, October 25, 2012 and continued on Friday, October 26, 2012, without my knowledge or approval, or that of the Chief Judge.
4. On Friday morning, the Prosecuting Attorney presented evidence on the final case and I advised her that I only had a small window of time that afternoon to take the return from the Grand Jury because the rest of my afternoon was committed to previously

scheduled conferences and other meetings. I was assured that the Prosecuting Attorney was confident that she would finish in 3 hours, with the session beginning at 7:45 a.m. I made it clear that the return needed to be done no later than noon.

5. Because the Prosecuting Attorney did not conclude the presentation of the evidence until after 1:00 p.m. on Friday, October 26, 2012, I was not able to take the return from the Grand Jury that afternoon.

6. I did not, at any time, refuse to take the return on Monday, October 29, 2012 because of the costs attendant to bringing back the Grand Jury foreperson, the Grand Jury secretary and the Grand Jury counsel, or for any other reason.

7. When I spoke to First Deputy Prosecuting Attorney, Jacob Delaplane, late in the afternoon on Friday, October 26, 2012, he informed me that the Prosecuting Attorney's office obtained an arrest warrant which was signed by a District Court Judge and that the defendant had been taken into custody earlier that afternoon.

8. Because the defendant had been taken into custody, Mr. Delaplane stated that an immediate public safety issue no longer existed and I therefore informed Mr. Delaplane that I would address the issue of return of the Grand Jury if the appropriate motion was filed on Monday, October 29, 2012.

9. Mr. Delaplane expressed concern that because there was no pending case, he would not be able to file a motion, however, I explained I thought he had enough information concerning the identity of the defendant to file the motion as a special proceeding.

10. After my conversation with Mr. Delaplane on Friday, October 26, 2012, I fully expected that the Prosecuting Attorney's office would file an emergency motion to be heard on October 29, 2012.

11. It is my understanding that because the defendant was taken into custody on Friday, October 26, 2012, his arraignment and plea occurred on Monday, October 29, 2012 and that a preliminary hearing has been set for Wednesday, October 31, 2012 at 1:00 p.m.

I, KATHLEEN N. A. WATANABE, declare under penalty of law that the foregoing is true and correct.

DATED: Lihue, Kauai, October 30, 2012.

/s/Kathleen N.A. Watanabe
KATHLEEN N. A. WATANABE

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on the following by electronic service (JEFS) as indicated on the date noted below:

Jacob Delaplane
First Deputy Prosecuting Attorney
County of Kauai
3990 Ka'ana Street, Suite 210
Lihue, HI 96766

Attorney for Petitioner
Shaylene Iseri-Carvalho

DATED: Honolulu, Hawaii, October 30, 2012.

/s/Robyn B. Chun
DIANE ERICKSON
ROBYN B. CHUN
Deputy Attorneys General

Attorneys for Respondent
The Honorable Kathleen N. A. Watanabe