

**Electronically Filed
Supreme Court
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No. SCWC-10-0000253

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Respondent/Plaintiff-Appellee,

vs.

EMILIO SORIA, Petitioner/Defendant-Appellant.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(ICA NO. CAAP-10-0000253; CASE NO. 1DTA-10-05767)

CONCURRING AND DISSENTING OPINION BY ACOPA, J.

I would vacate the September 9, 2011 judgment of the Intermediate Court of Appeals (ICA) in support of its August 17, 2011 summary disposition order (SDO) affirming the December 6, 2010 judgment of the District Court of the First Circuit, finding Petitioner/Defendant-Appellant Emilio Soria guilty of HRS § 291E-61(a)(1), and remand the case to the district court to dismiss the complaint without prejudice, based on the concurring and dissenting opinion in State v. Nesmith, ___ Hawai'i ___, ___ P.3d ___ (2012) (Acoba, J., concurring and dissenting).

DATED: Honolulu, Hawai'i, April 30, 2012.

/s/ Simeon R. Acoba, Jr.

