

**Electronically Filed
Supreme Court
SCWC-30719
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No. SCWC-30719

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII, Respondent/Plaintiff-Appellee,

vs.

ALEJANDRO PADILLA, Petitioner/Defendant-Appellant.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(ICA NO. 30719; CASE NO. 1DTA-10-00147)

CONCURRING AND DISSENTING OPINION BY ACOPA, J.

I would vacate the August 2, 2011 judgment of the Intermediate Court of Appeals (ICA) in support of its June 29, 2011 summary disposition order (SDO) and the July 21, 2010 judgment of the District Court of the First Circuit, with respect to the claims raised by Petitioner/Defendant-Appellant Alejandro Padilla. I would 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.

