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Supreme Court  
SCWC-29520  
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IN THE SUPREME COURT OF THE STATE OF HAWAII

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STATE OF HAWAII, Respondent/Plaintiff-Appellee,

vs.

PETER NEWAL MAHARAJ, Petitioner/Defendant-Appellant.

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SCWC-29520

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS  
(ICA NO. 29520; HPD TRAFFIC NO. 1DTA-08-03393)

NOVEMBER 18, 2013

DISSENTING OPINION BY RECKTENWALD, C.J.,  
IN WHICH NAKAYAMA, J., JOINS

I respectfully dissent. For the reasons set forth in my dissenting opinion in State v. Apollonio, \_\_\_ Hawai'i \_\_\_, \_\_\_ P.3d \_\_\_ (2013), I respectfully disagree with the majority's conclusion that the lack of a mens rea allegation in the charge

requires that the case be dismissed without prejudice.<sup>1</sup> The defendant here did not timely object to the sufficiency of the charge in the trial court. In my view, where a defendant does not timely object to a deficient charge, the defendant is required to show how he or she was prejudiced by the error. In the instant case, the defendant has neither alleged nor demonstrated how he was prejudiced by the deficient charge.

Accordingly, I respectfully dissent.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama



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<sup>1</sup> Although Apollonio did not explicitly address the Hawai'i Rules of Penal Procedure Rule 7(d) argument that is relied on in part by the majority, see majority opinion at 12, in my view, such an argument is subject to the same plain error analysis as set forth in my dissenting opinion in Apollonio.