SCWC-30128

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Respondent/Plaintiff-Appellee,

vs.

RAYMOND JOHN BOOTS, JR., Petitioner/Defendant-Appellant.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(ICA NO. 30128; FC-CR NO. 08-1-0182)

<u>ORDER ACCEPTING APPLICATION FOR WRIT OF CERTIORARI AND
AFFIRMING THE INTERMEDIATE COURT OF APPEALS' JUDGMENT ON APPEAL</u>
(By: Recktenwald, C.J., Nakayama, McKenna, and Pollack, JJ.,
and Circuit Judge Ochiai, in place of Acoba, J., recused)

On November 14, 2013, petitioner/defendant-appellant

Raymond John Boots, Jr. (Raymond) filed an application for writ

of certiorari seeking review of the September 16, 2013 judgment

of the Intermediate Court of Appeals (ICA), including the ICA's

August 2, 2013 Order Denying Motion for Reconsideration, wherein

the ICA denied Raymond's request that it preserve his ability to

raise an Hawai'i Rules of Penal Procedure (HRPP) Rule 40 petition

with regard to his ineffective assistance of counsel claims.

Upon review of the application for writ to certiorari

filed on November 14, 2013, by Petitioner/Defendant-Appellant

Raymond John Boots, Jr.,

IT IS HEREBY ORDERED that the application for a writ of certiorari is accepted.

IT IS FURTHER ORDERED that the September 16, 2013 judgment of the Intermediate Court of Appeals is affirmed in all respects, except that the petitioner may file an HRPP Rule 40 petition challenging the Family Court of the Third Circuit's October 27, 2009 amended judgment on the grounds that he received ineffective assistance of counsel because (1) trial counsel did not cross-examine the complaining witness about her mental state on the day of the incident or because (2) trial counsel failed to call his other daughter to testify as a percipient witness.

DATED: Honolulu, Hawaiʻi, December 20, 2013.

Robert K. Allen
for petitioner

Shaunda A. K. Liu
for respondent

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Dean E. Ochiai