

**Electronically Filed
Supreme Court
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IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

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ALBERT VILLADOS, JR., also known as ALBERTO VILLADOS, JR.,
Petitioner/Petitioner-Appellant/Cross-Appellee,

vs.

STATE OF HAWAI‘I,
Respondent/Respondent-Appellee/Cross-Appellant.

SCWC-15-0000111

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-15-0000111; S.P.P. NO. 13-1-0009(2); CR. NO. 08-1-0115(2))

DECEMBER 9, 2020

CONCURRING OPINION BY McKENNA, J., WITH WHOM WILSON, J., JOINS

I join the majority opinion. Because the previous certiorari application from the direct appeal was dismissed for untimeliness, in this certiorari proceeding from a post-conviction proceeding, it is appropriate to vacate the judgment of the Intermediate Court of Appeals ("ICA") in the previous direct appeal with an instruction that it be refiled to then allow Villados to file a timely certiorari application. After

that, this court can consider the merits of the certiorari application in the direct appeal.

This case is procedurally distinguishable from State v. Uchima, 147 Hawai'i 64, 464 P.3d 852 (2020), in which we accepted an untimely certiorari application from a direct appeal, where counsel admitted ineffective assistance by failing to effectuate a timely filing. In Villados's case, because the previous certiorari application had already been dismissed as untimely, it is appropriate to order the ICA to enter a new judgment on appeal to allow filing of a timely application. This case does not affect this court's ability pursuant to Uchima to take jurisdiction over untimely certiorari applications in direct appeals when the ineffective assistance of counsel is clear from the record. Uchima, 147 Hawai'i at 82, 464 P.3d at 870.

/s/ Sabrina S. McKenna

/s/ Michael D. Wilson

