

NO. 26870

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Respondent/Plaintiff-Appellee

vs.

TRACY NICHOLS, Petitioner/Defendant-Appellant

K. HAMAKA'DO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

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FILED

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CR. NO. 03-1-0493(2))

ORDER DENYING MOTION FOR RECONSIDERATION

(By: Levinson, Acoba, and Duffy JJ.; and Nakayama, J.,
Dissenting, With Whom Moon, C.J., Joins)

The motion for reconsideration filed on July 24, 2006 by plaintiff-appellee State of Hawai'i requesting that this court review its published opinion, filed on July 12, 2006, is hereby denied.

DATED: Honolulu, Hawai'i, August 25, 2006.

Girard D. Lau and
Kimberly Tsumoto
for plaintiff-appellee
State of Hawai'i
on the motion

Steven H. Levinson
Barbara E. Duffy, Jr.

DISSENT BY NAKAYAMA, J., IN WHICH MOON, C.J., JOINS

I would grant reconsideration of the opinion for the reasons stated in the dissent and also out of consideration of the ethical dilemmas that will be confronted by defense counsel, as set forth in the state's motion.

Junia C. Nakayama