

CONCURRING AND DISSENTING OPINION BY DUFFY, J.  
IN WHICH ACOBA, J., JOINS

I concur with the majority on points (1) and (2).  
Based upon Justice Acoba's Dissenting Opinion in State v. Rivera,  
106 Hawai'i 146, 102 P.3d 1044 (2004), in which I joined, I would  
vacate the sentence imposed and remand for sentencing consistent  
with the Dissenting Opinion in State v. Rivera.



James E. Duffy, Jr.