

DISSENT BY ACOBA, J.

I would grant the application for writ of certiorari to determine whether a hearing should have been granted by the second circuit court to take evidence pursuant to Hawai'i Rules of Penal Procedure (HRPP) Rule 40(a)(1)(i) and/or (iv) on the grounds of a violation of the constitution (stating that "the judgment was obtained or sentence imposed in violation of the constitution of the United States or of the State of Hawai'i") and/or of newly discovered evidence, respectively. Such purported evidence was that "one of the prosecution's expert witnesses, Fred Zain[,]" State v. Karagianes, No. 17612, slip op. at 15 (Haw. Jan 12, 1996), had been the subject of a "report . . . that . . . [his] pattern and practice of misconduct completely undermined the validity and reliability of any forensic work he performed or reported, and thus constitutes newly discovered evidence[,]" In re Investigation of the W. Virginia State Police Crime Lab., Serology Div., 438 S.E.2d 501, 504 (W.Va. 1993), and that such evidence "could not have been discovered with the exercise of due diligence before trial or appeal," HRPP Rule 40 Petition.

A handwritten signature in black ink, appearing to be "ACoba", written in a cursive style.