

**STATE V. ANCIRA**

This memorandum opinion was not selected for publication in the New Mexico Appellate Reports. Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions. Please also note that this electronic memorandum opinion may contain computer-generated errors or other deviations from the official paper version filed by the Court of Appeals and does not include the filing date.

**STATE OF NEW MEXICO,  
Plaintiff-Appellee,  
v.  
PRESCILIANO ANCIRA,  
Defendant-Appellant.**

No. 34,556

COURT OF APPEALS OF NEW MEXICO

December 16, 2015

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY, James W. Counts,  
District Judge

**COUNSEL**

Hector H. Balderas, Attorney General, Santa Fe, NM, for Appellee

Jorge A. Alvarado, Chief Public Defender, Allison H. Jaramillo, Assistant Appellate Defender, Santa Fe, NM, for Appellant

**JUDGES**

MICHAEL E. VIGIL, Chief Judge. WE CONCUR: JONATHAN B. SUTIN, Judge, LINDA M. VANZI, Judge

**AUTHOR:** MICHAEL E. VIGIL

**MEMORANDUM OPINION**

**VIGIL, Chief Judge.**

{1} Defendant Presciliano Ancira filed a docketing statement appealing his convictions pursuant to a conditional plea to trafficking a controlled substance, possession of drug paraphernalia, driving while license revoked, and possess or claim

an interest in forfeitable property, as set forth in the district court's judgment and sentence, entered February 3, 2015. In this Court's notice of proposed disposition, we proposed to conclude that Defendant failed to show prejudice or error and proposed to affirm Defendant's convictions. Defendant was granted an extension to file his memorandum in opposition and thereafter filed a timely memorandum in opposition. We have given due consideration to the memorandum in opposition, and, remaining unpersuaded, we affirm Defendant's convictions.

{2} As a prefatory matter, we note that a party responding to a proposed disposition of this Court must point out specific errors in fact or law. See *Hennessey v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 ("Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law."). In response to this Court's calendar notice, counsel has restated the facts and proceedings that were already presented to this Court in Defendant's docketing statement. The facts included in the memorandum in opposition do not appear to include any new information as compared with the facts and proceedings described in Defendant's docketing statement, and Counsel has not pointed out whether any of the facts asserted are contrary to those relied on by this Court in our notice of proposed disposition. We remind counsel that the repetition of material that has already been presented to the Court, with no indication as to which parts, if any, contradict the facts relied upon by the district court or this Court or which parts, if any, are responsive to the notice of proposed disposition, is not useful and creates unnecessary work for both this Court and the parties. We request that Counsel refrain from this practice in any future pleadings she may file with this Court.

{3} In his memorandum in opposition, Defendant continues to argue that the district court erred in denying the requested continuance. As we discussed in our notice of proposed disposition, Defendant failed to explain why the district court should have granted Defendant's motion for continuance of trial—in order to hear Defendant's motion to suppress prior to trial—when the district court could have heard the motion to suppress immediately prior to and on the morning of trial. In his memorandum in opposition, Defendant states that his trial counsel "does not recall whether he asked the district court to hear the motion [to suppress] on the morning of trial, but believes he did not." As such, Defendant has still failed to show how the district court's denial of the motion for continuance of trial violated any rule or law. See *id.* ("Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law.").

{4} Instead, Defendant argues that the factors that the district court should consider when deciding whether to grant a continuance are applicable to the present case and that there was "clear prejudice[.]" However, neither of these arguments explains how the district court violated any rule or law when there was nothing stopping the district court from hearing the motion to suppress immediately prior to trial and when Defendant did not even ask the district court to hear the motion to suppress immediately prior to trial. "It is well established that a party may not invite error and then proceed to complain about it on appeal." *State v. Jim*, 2014-NMCA-089, ¶ 22, 332 P.3d 870. Indeed, if

Defendant was prejudiced by his counsel's failure to argue the motion to suppress prior to trial, rather than entering into a conditional plea reserving only the argument that the motion to continue should have been granted, such prejudice was not derived from any error on the part of the district court.

{5} Defendant presents no other issues or arguments that were not addressed in our notice of proposed disposition, so we refer Defendant to our responses therein. See *Hennessy*, 1998-NMCA-036, ¶ 24; *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that a party responding to a summary calendar notice must come forward and specifically point out errors of law and fact), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374.

{6} Accordingly, for the reasons set forth in our notice of proposed disposition and herein, we affirm Defendant's convictions.

{7} **IT IS SO ORDERED.**

**MICHAEL E. VIGIL, Chief Judge**

**WE CONCUR:**

**JONATHAN B. SUTIN, Judge**

**LINDA M. VANZI, Judge**