

STATE V. BARELA

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
CHARLES BARELA,
Defendant-Appellant.

No. 34,034

COURT OF APPEALS OF NEW MEXICO

December 30, 2014

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Judith
Nakamura, District Judge

COUNSEL

Gary K. King, Attorney General, Santa Fe, NM, for Appellee

Law Offices of the Public Defender, Jorge A. Alvarado, Chief Public Defender, Kathleen T. Baldrige, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

LINDA M. VANZI, Judge. WE CONCUR: MICHAEL E. VIGIL, Judge, J. MILES HANISEE, Judge

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Judge.

{1} Defendant appeals from the district court's judgment and sentence, convicting him of possession of a controlled substance and possession of a controlled substance with the intent to distribute. Unpersuaded that Defendant established error in

sentencing, we issued a notice of proposed summary disposition, proposing to affirm. Defendant has responded to our notice with a memorandum in opposition. We remain unpersuaded that Defendant was not entitled to more presentence confinement credit. Accordingly, we affirm.

{2} On appeal, Defendant argues that the district court erred by denying him presentence confinement credit for the entire time he was in custody between the date of Defendant's arrest on the charges in the current case and the date of sentencing. [DS unnumbered 2-3; MIO 3-4] Defendant's docketing statement contained an argument seeking to apply equitable principles considered in the speedy trial context and in the context of the State's responsibility to locate probationers. [DS unnumbered 3] Our notice proposed to hold that those principles are inapplicable to current situation, relying on NMSA 1978, Section 31-20-12 (1977), and *State v. Facteau*, 1990-NMSC-040, ¶ 7, 109 N.M. 748, 790 P.2d 1029. Applying Section 31-20-12 and the Supreme Court's construction of that statutory provision in *Facteau*, we proposed to hold that Defendant's confinement was not triggered by or sufficiently related to the current charges to warrant any more credit for his confinement between arrest and sentencing than the time he received.

{3} In response to our notice, Defendant acknowledges that our notice relied on the appropriate law and operative facts, [MIO 3] but nevertheless submits that he is entitled to presentence confinement credit dating from his arrest to sentencing. [MIO 3-4] For the reasons stated above and in our notice, we disagree.

{4} Accordingly, to the extent that Defendant may have been entitled to any presentence confinement credit, we are not persuaded that he was entitled to any more credit than the 85 days granted to him. We affirm.

{5} IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:

MICHAEL E. VIGIL, Judge

J. MILES HANISEE, Judge