

**STATE V. FRANKLIN**

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**STATE OF NEW MEXICO,  
Plaintiff-Appellee,  
v.  
CHRISTOPHER FRANKLIN,  
Defendant-Appellant.**

NO. 34,057

COURT OF APPEALS OF NEW MEXICO

April 28, 2015

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY, William G. Shoobridge,  
District Judge

**COUNSEL**

Hector H. Balderas, Attorney General, Santa Fe, NM, Kenneth H. Stalter, Assistant Attorney General, Albuquerque, NM, for Appellee

Jorge A. Alvarado, Chief Public Defender, B. Douglas Wood III, Assistant Appellate Defender, Santa Fe, NM, for Appellant

**JUDGES**

TIMOTHY L. GARCIA, Judge. WE CONCUR: MICHAEL E. VIGIL, Chief Judge,  
JONATHAN B. SUTIN, Judge

**AUTHOR:** TIMOTHY L. GARCIA

**MEMORANDUM OPINION**

**GARCIA, Judge.**

{1} Defendant appeals following entry of the “order revoking probation and imposing judgment and sentence.” [RP 173, 175] Defendant specifically appeals from the district

court's ruling that denies his post-judgment challenge to the sentence for untimeliness. [RP 182] Our notice proposed to reverse and remand, on the basis that Defendant's December 18, 2013, motion to amend the judgment and sentence (motion) [RP 179] was a timely and outstanding Rule 5-801(B) NMRA motion that the district court failed to consider on its merits. The State has notified this Court that it does not oppose our notice.

**{2}** For the reasons provided in our notice, we reverse and remand for consideration of the merits of Defendant's outstanding motion.

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

**TIMOTHY L. GARCIA, Judge**

**WE CONCUR:**

**MICHAEL E. VIGIL, Chief Judge**

**JONATHAN B. SUTIN, Judge**