

STATE V. FRESQUEZ

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
MATILDA FRESQUEZ,
Defendant-Appellant.**

NO. 35,763

COURT OF APPEALS OF NEW MEXICO

December 22, 2016

APPEAL FROM THE DISTRICT COURT OF TAOS COUNTY, Sarah C. Backus, District
Judge

COUNSEL

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

Bennett J. Baur, Chief Public Defender, Kathleen T. Baldrige, Assistant Appellate
Defender, Santa Fe, NM, for Appellant

JUDGES

LINDA M. VANZI, Judge. WE CONCUR: MICHAEL E. VIGIL, Chief Judge, M. MONICA
ZAMORA, Judge

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Judge.

{1} Defendant appeals from the district court's judgment, sentence, and commitment entered following her plea of guilty pursuant to a plea and disposition agreement, convicting her of one count of aggravated battery upon a peace officer (deadly weapon).

This Court issued a notice proposing summary dismissal. Defendant has filed a memorandum in opposition to this Court's notice of proposed disposition, which we have duly considered. Unpersuaded, we dismiss.

{2} Defendant presents a single issue on appeal: whether the district court erred in determining that Defendant was disqualified from receiving a suspended sentence due to a prior unsatisfactory discharge from probation. [CN 2] We noted in our calendar notice, however, that it did not appear from the plea and disposition agreement that Defendant reserved any issues for appeal. [CN 2] We further observed that the sentencing issue raised in Defendant's docketing statement did not appear to be jurisdictional. [CN 2] Consequently, we proposed to hold that Defendant waived her right to challenge her sentence on appeal. [CN 2] *See State v. Chavarria*, 2009-NMSC-020, ¶ 16, 146 N.M. 251, 208 P.3d 896 (“[T]he constitutional right to appeal is waivable, and a defendant who knowingly, intelligently, and voluntarily pleads guilty, waives the right to appeal his conviction and sentence.”); *see also id.* ¶ 9 (recognizing that a plea of guilty does not waive jurisdictional errors); *State v. Tafoya*, 2010-NMSC-019, ¶ 7, 148 N.M. 391, 237 P.3d 693 (stating that jurisdictional error is confined to instances in which the district court had no authority to act).

{3} In her memorandum in opposition to our notice of proposed disposition, Defendant notably does not point out specific errors in fact or law. *See Hennessy 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.”). Instead, Defendant acknowledges that “the trial court imposed a legal sentence,” but argues that this Court should reach the merits of her appeal because the district court sentenced her “without exercising any discretion[.]” [MIO 1] Throughout the balance of her memorandum in opposition, Defendant presents a well-reasoned argument that the district court abused its discretion by sentencing her to three years of incarceration and refusing to suspend any portion of her sentence based upon the internal policy of the probation office not to accept probationers who have been previously unsatisfactorily discharged from probation. [See generally MIO 3-7] What remains lacking, however, is any argument or legal support for the proposition that the district court's purported abuse of discretion rises to the level of jurisdictional error. Where a party cites no authority to support an argument, we may assume no such authority exists. *In re Adoption of Doe*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329. Therefore, we are unpersuaded that our proposed summary dismissal, based upon Defendant's waiver of appeal via the unconditional guilty plea, is incorrect.

{4} We note, however, that if Defendant wishes to further pursue her challenge to her sentence, she may file a petition for habeas corpus pursuant to Rule 5-802 NMRA.

{5} Therefore, for the reasons stated in this opinion, as well as those provided in our calendar notice, we dismiss.

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

LINDA M. VANZI, Judge

WE CONCUR:

MICHAEL E. VIGIL, Chief Judge

M. MONICA ZAMORA, Judge