

STATE V. GARCIA

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**STATE OF NEW MEXICO,
Plaintiff-Appellant,
v.
MARIO TOBY GARCIA,
Defendant-Appellee.**

No. 36,244

COURT OF APPEALS OF NEW MEXICO

July 18, 2017

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Cristina T.
Jaramillo, District Judge

COUNSEL

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

Bennett J. Baur, Chief Public Defender, J.K. Theodosia Johnson, Assistant Appellate Defender, Santa Fe, NM, for Appellee

JUDGES

J. MILES HANISEE, Judge. WE CONCUR: LINDA M. VANZI, Chief Judge, M. MONICA ZAMORA, Judge

AUTHOR: J. MILES HANISEE

MEMORANDUM OPINION

HANISEE, Judge.

{1} The State appeals from the district court's order dismissing the case without prejudice pursuant to LR2-400(I) NMRA (2016).

LR2-400 has been recompiled and amended as LR2-308 NMRA. For purposes of this case, the relevant provisions are the same.

1 [RP 18] Persuaded by the State's docketing statement, we entered a notice of proposed summary disposition, proposing to reverse. Defendant has filed a joint motion to amend and memorandum in opposition (MIO) to our notice. We are unpersuaded by Defendant's arguments and therefore reverse.

{2} In its docketing statement, the State articulated four issues—all of which relate to the central contention that the district court erred in dismissing the case pursuant to LR2-400. Our notice, which proposed summary reversal, set forth the relevant facts for each issue and the law that we believed controlled. In response, Defendant argues, pursuant to *State v. Franklin*, 1967-NMSC-151, 78 N.M. 127, 428 P.2d 982, and its progeny, that the district court did not abuse its discretion when it dismissed the case. [MIO 11] Defendant's MIO does not supply any legal or factual argument that persuades us that our analysis or proposed disposition was incorrect. See *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[.]" and the repetition of earlier arguments does not fulfill this requirement), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. Accordingly, we decline to address this issue any further.

{3} Defendant has also filed a motion to amend the docketing statement to add the issue of whether this Court has jurisdiction to hear this appeal. [MIO 1] Specifically, Defendant asserts that we do not have jurisdiction "because the State is not aggrieved by an order dismissing the case without prejudice." [MIO 1] However, there is no provision permitting an appellee to amend the appellant's docketing statement. See generally Rule 12-208 NMRA; Rule 12-210 NMRA. Additionally, even if Defendant could amend the State's docketing statement to include the issue he raises, *State v. Lucero*, 2017-NMCA-____, ____ P.3d ____, (No. 34,713, Apr. 3, 2017), forecloses his arguments. To the extent Defendant urges us to reconsider *Lucero*, we decline to do so.

{4} Accordingly, for the foregoing reasons, we reverse the district court and remand for further proceedings.

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

J. MILES HANISEE, Judge

WE CONCUR:

LINDA M. VANZI, Chief Judge

M. MONICA ZAMORA, Judge

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