

STATE V. GARCIA

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

No. A-1-CA-35958

COURT OF APPEALS OF NEW MEXICO

January 22, 2018

APPEAL FROM THE DISTRICT COURT OF LUNA COUNTY, Daniel Viramontes,
District Judge

COUNSEL

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

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

JUDGES

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

AUTHOR: M. MONICA ZAMORA

MEMORANDUM OPINION

ZAMORA, Judge.

{1} Defendant appeals from the sentence imposed by the district court on grounds that it is excessive and constitutes cruel and unusual punishment. [Amended DS 3] This Court's calendar notice proposed to summarily affirm. Defendant filed a memorandum

in opposition, which we have duly considered. Remaining unpersuaded by Defendant's arguments, we affirm.

{2} Defendant acknowledges that he was advised of the maximum penalties for the charges to which he plead, and that his sentence is legal. [MIO 3] See *State v. Vasquez*, 2010-NMCA-041, ¶ 41, 148 N.M. 202, 232 P.3d 438 (“[T]here is no abuse of discretion if the sentence imposed is authorized by law.”). Defendant also recognizes that by entering into a plea agreement, he waived his right to challenge the constitutionality of his sentence. [MIO 4] See *State v. Chavarria*, 2009-NMSC-020, ¶ 9, 146 N.M. 251, 208 P.3d 896 (“[A] plea of guilty or nolo contendere, when voluntarily made after advice of counsel and with full understanding of the consequences, waives objections to prior defects in the proceedings and also operates as a waiver of statutory or constitutional rights, including the right to appeal.” (internal quotation marks and citation omitted)). Defendant nevertheless continues to argue that his sentence is unjust and excessive in light of his no contest plea, which spared the child victim from the stress and grief of having to take the stand to testify at trial, and considering he is a “hard-working man who did a lot of good for a lot of people.” [Amended DS 4-5; MIO 3] Defendant has not presented any facts, law or argument to persuade this Court that our notice of proposed disposition was erroneous. 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).

{3} For these reasons, and those stated in this Court's calendar notice, we affirm.

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

M. MONICA ZAMORA, Judge

WE CONCUR:

LINDA M. VANZI, Chief Judge

MICHAEL E. VIGIL, Judge