

STATE V. GIBSON

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**STATE OF NEW MEXICO, Plaintiff-Appellee,
v.
TERRY D. GIBSON, Defendant-Appellant.**

Docket No. 29,507

COURT OF APPEALS OF NEW MEXICO

August 12, 2009

APPEAL FROM THE DISTRICT COURT OF DONA AÑA COUNTY, Stephen Bridgforth,
District Judge.

COUNSEL

Gary K. King, Attorney General, Margaret McLean, Assistant Attorney General, Santa Fe, NM, for Appellant.

Jeffrey C. Lahann, Las Cruces, NM, for Appellee.

JUDGES

MICHAEL E. VIGIL, Judge. WE CONCUR: CYNTHIA A. FRY, Chief Judge, CELIA FOY CASTILLO, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Judge.

The State of New Mexico appeals the district court's dismissal of the grand jury indictment charging Terry D. Gibson with several criminal offenses. This Court filed a calendar notice proposing dismissal because the notice of appeal was untimely filed. The State filed a memorandum in opposition, which we have duly considered.

The State's memorandum in opposition asks this Court to excuse the late filing because it was caused by an inadvertent failure to allow for the fact that the month of March has thirty-one days, not thirty. [MIO 3] Rule 12-201(A)(2) NMRA requires that a notice of appeal be filed within thirty days after the judgment or order appealed from is filed in the district court clerk's office. We have held that the timely filing of a notice of appeal is a mandatory precondition to the exercise of our appellate jurisdiction. See *State v. Upchurch*, 2006-NMCA-076, 139 N.M. 739, 137 P.3d 679 (dismissing state's appeal when notice of appeal filed one day late). The docketing statement does not mention any circumstances of the type that might excuse the late filing. See, e.g., *Trujillo v. Serrano*, 117 N.M. 273, 871 P.2d 369 (1994) (holding that late filing of notice of appeal may be excused where court error caused the delay).

Because the notice of appeal was not timely filed, we dismiss this appeal.

IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

WE CONCUR:

CYNTHIA A. FRY, Chief Judge

CELIA FOY CASTILLO, Judge