

STATE V. GOMEZ

This memorandum opinion was not selected for publication in the New Mexico Appellate Reports. Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions. Please also note that this electronic memorandum opinion may contain computer-generated errors or other deviations from the official paper version filed by the Court of Appeals and does not include the filing date.

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JULIAN NAVARRETTE GOMEZ,
Defendant-Appellant.

No. 33,486

COURT OF APPEALS OF NEW MEXICO

May 22, 2014

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

COUNSEL

Gary K. King, Attorney General, Santa Fe, NM, for Appellee

Jorge A. Alvarado, Chief Public Defender, Steven J. Forsberg, Assistant Public Defender, Santa Fe, NM, for Appellant

JUDGES

M. MONICA ZAMORA, Judge. WE CONCUR: JAMES J. WECHSLER, Judge,
MICHAEL D. BUSTAMANTE, Judge

AUTHOR: M. MONICA ZAMORA

MEMORANDUM OPINION

ZAMORA, Judge.

{1} Defendant appeals from a judgment and sentence entered after the district court revoked his probation. We issued a calendar notice proposing to affirm. Defendant has responded with a motion to amend the docketing statement and a memorandum in

opposition. For the reasons discussed below, Defendant's motion to amend is denied and the district court judgment is affirmed.

Motion to Amend

{2} Defendant has filed a motion to amend the docketing statement to add a new issue. See Rule 12-208(F) NMRA. In cases assigned to the summary calendar, this Court will grant a motion to amend the docketing statement to include additional issues if the motion (1) is timely, (2) states all facts material to a consideration of the new issues sought to be raised, (3) explains how the issues were properly preserved or why they may be raised for the first time on appeal, (4) demonstrates just cause by explaining why the issues were not originally raised in the docketing statement, and (5) complies in other respects with the appellate rules. See *State v. Rael*, 1983-NMCA-081, ¶ 15, 100 N.M. 193, 668 P.2d 309. This Court will deny motions to amend that raise issues that are not viable, even if they allege fundamental or jurisdictional error. See *State v. Moore*, 1989-NMCA-073, ¶ 42, 109 N.M. 119, 782 P.2d 91, *overruled on other grounds by State v. Salgado*, 1991-NMCA-044, 112 N.M. 537, 817 P.2d. 730.

{3} Here, Defendant is seeking to add the issue of whether or not the underlying conviction violated the Second Amendment of the United States Constitution. As indicated in the judgment and sentence entered after Defendant's probation on this conviction was revoked, Defendant's underlying conviction was entered pursuant to a guilty plea. [RP 141] "[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." *State v. Hodge*, 1994-NMSC-087, ¶ 14, 118 N.M. 410, 882 P.2d 1. A defendant's right to appeal following a guilty plea is limited to jurisdictional challenges and those issues specifically reserved in the plea agreement. See *id.* ¶¶ 14-24; see also Rule 5-304(A)(2) NMRA ("With the approval of the court and the consent of the state, a defendant may enter a conditional plea of guilty or no contest, reserving in writing the right, on appeal from the judgment, to review of the adverse determination of any specified pre-trial motion."). Because Defendant waived his constitutional challenge when he pled guilty without reserving the issue for review, we do not deem his motion to amend to be viable.

Issue Raised in Docketing Statement

{4} Our calendar notice proposed to affirm on the issues raised in the docketing statement. Defendant does not address these issues in the memorandum in opposition. When a case is decided on the summary calendar, an issue is deemed abandoned where a party fails to respond to the proposed disposition of the issue. See *State v. Johnson*, 1988-NMCA-029, ¶ 8, 107 N.M. 356, 758 P.2d 306. Accordingly, we affirm for the reasons set forth in the calendar notice.

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

M. MONICA ZAMORA, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

MICHAEL D. BUSTAMANTE, Judge