

STATE V. HARRIS

This memorandum opinion was not selected for publication in the New Mexico 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 Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions.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.
LEE HARRIS,
Defendant-Appellant.

NO. 29,452

COURT OF APPEALS OF NEW MEXICO

April 19, 2010

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Reed S.
Sheppard, District Judge

COUNSEL

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

Hugh W. Dangler, Chief Public Defender, Santa Fe, NM, Jason Weaks, Assistant Public Defender, Albuquerque, NM, for Appellant

JUDGES

RODERICK T. KENNEDY, Judge. WE CONCUR: CELIA FOY CASTILLO, Judge,
TIMOTHY L. GARCIA, Judge

AUTHOR: RODERICK T. KENNEDY

MEMORANDUM OPINION

KENNEDY, Judge.

Defendant appeals from the district court order revoking his probation, entered pursuant to an admission, in which Defendant reserved his right to appeal the court's order

denying his motion to dismiss. We issued a notice of proposed summary disposition, proposing to summarily reverse. The State has responded to our notice, indicating that it agrees with our proposed analysis and disposition. We hold that the district court erred in denying Defendant's motion to dismiss. We therefore reverse.

On appeal, Defendant argues that the district court should have dismissed the petition to revoke his probation because the adjudicatory hearing on the petition was not held within the time prescribed by Rule 5-805(L) NMRA. [DS 5] Our notice proposed to agree. The plain language of the rule provides that a probationer's initial hearing "shall be commenced within thirty (30) days" after the file-date of the motion to revoke probation, Rule 5-805(G)(1), and "[t]he adjudicatory hearing shall commence no later than sixty (60) days after the initial hearing is conducted." Rule 5-805(H). "If an adjudicatory hearing on the alleged probation violation is not held within the time limits prescribed by this rule, the motion to revoke probation shall be dismissed with prejudice." Rule 5-805(L).

The State agrees with this Court that the adjudicatory hearing on the motion to revoke Defendant's probation was not timely held and that it did not seek any extension of time for commencement of the hearing. [Response 2-3] The State also agrees that the proper remedy should have been to grant Defendant's motion and dismiss the motion to revoke probation. [Response 3]

For the reasons set forth herein and in our notice, we reverse.

IT IS SO ORDERED.

RODERICK T. KENNEDY, Judge

WE CONCUR:

CELIA FOY CASTILLO, Judge

TIMOTHY L. GARCIA, Judge