

STATE V. LOPEZ

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JASMINE LOPEZ,
Defendant-Appellant.

NO. 30,262

COURT OF APPEALS OF NEW MEXICO

September 21, 2010

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY, Stephen Bridgforth,
District Judge

COUNSEL

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

Hugh W. Dangler, Chief Public Defender, Eleanor Brogan, Assistant Appellate
Defender, Santa Fe, NM, for Appellant

JUDGES

CYNTHIA A. FRY, Chief Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge,
TIMOTHY L. GARCIA, Judge

AUTHOR: CYNTHIA A. FRY

MEMORANDUM OPINION

FRY, Chief Judge.

Defendant appeals the denial of her motion to withdraw her no contest plea. In our notice, we proposed to affirm the district court's ruling. Defendant has timely responded. We have considered her arguments and not being persuaded, we affirm.

In our notice, we pointed out that this Court reviews the denial of a motion to withdraw a plea for an abuse of discretion. *State v. Hunter*, 2006-NMSC-043, ¶ 11, 140 N.M. 406, 143 P.3d 168. An abuse of discretion in such a context is described as “when [the district court] is shown to have acted unfairly, arbitrarily, or committed manifest error.” *Id.* (internal quotation marks and citation omitted). Manifest error occurs when the undisputed facts establish that the plea was not knowingly and voluntarily given. *Id.* We proposed to find that the undisputed facts indicated that Defendant’s plea was knowingly and voluntarily given.

Defendant argued below and continues to argue here that the motion to withdraw should have been reviewed for a “fair and just reason” rather than manifest injustice. See Rule 5-304 NMRA (Committee Comment.). As we pointed out in our notice, however, the Supreme Court in *Hunter* has apparently rejected that standard. We decline to apply a different standard than the one stated in *Hunter*. See *Alexander v. Delgado*, 84 N.M. 717, 718, 507 P.2d 778, 779 (1973) (recognizing that we are limited in our ability to overrule precedent of our Supreme Court).

CONCLUSION

For the reasons stated herein and in the calendar notice, we affirm the denial of Defendant’s motion to withdraw her plea.

IT IS SO ORDERED.

CYNTHIA A. FRY, Chief Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Judge

TIMOTHY L. GARCIA, Judge