

STATE V. MARTIN

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 Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions.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.
MITCHEL MARTIN,
Defendant-Appellant.

No. 34,045

COURT OF APPEALS OF NEW MEXICO

December 30, 2014

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY, Sandra A. Price,
District Judge

COUNSEL

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

Law Offices of the Public Defender, Jorge A. Alvarado, Chief Public Defender, Sergio
Viscoli, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

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

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Judge.

{1} Defendant appeals from the district court's order denying his "motion to withdraw plea," where Defendant sought to withdraw his April 10, 2007, plea and disposition agreement (2007 plea), as well as his July 17, 2013, repeat offender plea and

disposition agreement (2013 plea). [RP 8, 34, 114, 123, 173, 200] Our notice proposed to affirm, and Defendant filed a memorandum in opposition. We remain unpersuaded by Defendant's arguments and therefore affirm.

{2} Defendant's challenge to both pleas is premised on his argument that the 5 to 20-year parole period imposed in the 2007 judgment and sentence [RP 36] violated the 2007 plea agreement's provision for a 2-year parole period. [RP 9-1, 130; DS 3-4] For this reason, Defendant argues that the sentence was illegal and that he thus should have been allowed to withdraw from the 2007 plea. [MIO 4] In support of his continued argument, Defendant refers to *State v. Franklin*, 1967-NMSC-151, 78 N.M. 127, 428 P.2d 982, and *State v. Boyer*, 1985-NMCA-029, 103 N.M. 655, 712 P.2d 1. [MIO 6]

{3} We remain unpersuaded by Defendant's continued arguments and, for the reasons detailed in our notice, affirm the district court's decision to deny Defendant's motion to withdraw on the basis that Defendant's challenge to the pleas was untimely. We note that if Defendant so chooses, he may elect to seek habeas relief to challenge his pleas, but should do so in a petition for writ of habeas corpus filed in district court that complies with the content requirements of Rule 5-802 NMRA, and that is specifically designated as a petition for writ of habeas corpus. See *State v. Torres*, 2012-NMCA-026, ¶¶ 17-27, 272 P.3d 689 (describing circumstances that limit district court jurisdiction to correct illegal sentences based on habeas corpus motions under Rule 5-802).

{4} To conclude, for the reasons discussed above and in our notice, we affirm.

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

LINDA M. VANZI, Judge

WE CONCUR:

MICHAEL E. VIGIL, Judge

M. MONICA ZAMORA, Judge