

STATE V. NEWMAN

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
ALFREDO RAMON NEWMAN,
Defendant-Appellant.

No. 30,371

COURT OF APPEALS OF NEW MEXICO

July 28, 2010

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Ross C.
Sanchez, District Judge

COUNSEL

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

Alfredo Ramon Newman, Albuquerque, NM, Pro Se Appellant

JUDGES

JONATHAN B. SUTIN, Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge,
RODERICK T. KENNEDY, Judge

AUTHOR: JONATHAN B. SUTIN

MEMORANDUM OPINION

SUTIN, Judge.

Defendant appeals from an order of the district court. We issued a calendar notice proposing to dismiss. Defendant has responded with a memorandum in opposition. After due consideration, we dismiss the appeal.

An order of conditional discharge was entered against Defendant in November 1999. [RP 83] In October 2009, Defendant filed a pro se pleading in district court titled “Order of Dismissal Pursuant to Conditional Discharge.” [RP 87] The order/motion requested that the 1999 charges be dismissed. The district court judge signed Defendant’s order and it was file stamped October 13, 2009. [RP 87] In April 2010, Defendant filed a pro se notice of appeal. [RP 88]

Our calendar notice proposed dismissal on two independent grounds. Regardless of which order Defendant is challenging—the the 1999 order or the October 2009 order—Defendant’s appeal is untimely. See Rule 12-201(A)(2) NMRA (providing thirty days to file the notice of appeal); *Govich v. N. Am. Sys., Inc.*, 112 N.M. 226, 230, 814 P.2d 94, 98 (1991) (compliance with notice of appeal time and place requirements are mandatory preconditions to exercise of appellate jurisdiction). Defendant’s memorandum in opposition does not point out any error in fact or law with respect to this ground for dismissal. See *State v. Ibarra*, 116 N.M. 486, 489, 864 P.2d 302, 305 (Ct. App. 1993) (“A party opposing summary disposition is required to come forward and specifically point out errors in fact and/or law.”). We point out though that Defendant’s claim that the system has been unfair to him appears to be based on a misunderstanding. Defendant received a conditional discharge, without an adjudication of guilt. [RP 83] See NMSA 1978, § 31-20-13 (1994). Defendant’s request to the district court in October 2009 for an order of dismissal was unnecessary, because there were no pending charges to dismiss.

For the reasons set forth in this opinion, we dismiss the appeal.

IT IS SO ORDERED.

JONATHAN B. SUTIN, Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Judge

RODERICK T. KENNEDY, Judge