

STATE V. R. AMARO

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
RICHARD AMARO,
Defendant-Appellant.

NO. 28,919

COURT OF APPEALS OF NEW MEXICO

June 11, 2009

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY, Karen L.
Townsend, District Judge

COUNSEL

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

Hugh W. Dangler, Chief Public Defender, Allison H. Jaramillo, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

CELIA FOY CASTILLO, Judge. WE CONCUR: JAMES J. WECHSLER, Judge,
ROBERT E. ROBLES, Judge

AUTHOR: CELIA FOY CASTILLO

MEMORANDUM OPINION

CASTILLO, Judge.

Defendant appeals from the district court's order that affirms his magistrate judgment and sentences for driving with a revoked/suspended license and for failing to report to

the detention center. [RP 2, 3, 52] Defendant appeals specifically from the district court's affirmance of his May 12, 2008 magistrate judgment and 364-day sentence based on his failure to report to the detention center. [RP 2; DS 2-3] Our second notice (1) viewed the 364-day sentence as the result of the magistrate judge's decision to hold Defendant in indirect contempt based on his failure to report to the San Juan Detention Center as required by the April 8, 2008 commitment order [RP 14-15]; and (2) proposed to hold that Defendant was not afforded the proper procedures for contempt. See generally NMSA 1978, § 35-3-9 (1991) (providing that a magistrate has jurisdiction to punish for contempt for disobedience of any lawful order of the court); Rule 6-111(B) NMRA (providing that a contempt shall be punished only after notice and hearing). The State filed a timely response to our second notice, providing that it is unable to offer any facts or law to challenge the proposed disposition and that it agrees with the analysis and approach taken in the second notice.

Accordingly, based on the reasons set forth in our second notice, we reverse the district court's affirmance of Defendant's May 12, 2008, judgment and sentence, and remand to the district court for Defendant to be afforded an appropriate de novo contempt proceeding.

IT IS SO ORDERED.

CELIA FOY CASTILLO, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

ROBERT E. ROBLES, Judge