

STATE V. RODRIGUEZ

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
BETTY RODRIGUEZ,
Defendant-Appellant.

NO. 30,451

COURT OF APPEALS OF NEW MEXICO

August 9, 2010

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Robert M.
Schwartz , District Judge

COUNSEL

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

Betty Rodriguez, Albuquerque, NM, Pro Se Appellant

JUDGES

CELIA FOY CASTILLO, Judge. WE CONCUR: JAMES J. WECHSLER, Judge,
RODERICK T. KENNEDY, Judge

AUTHOR: CELIA FOY CASTILLO

MEMORANDUM OPINION

CASTILLO, Judge.

Defendant, pro se, seeks to appeal from a remand order of the district court sending her to the Metropolitan Detention Center. We issued a notice of proposed summary disposition, proposing to dismiss for lack of a final, appealable order. Defendant has

filed a response to our notice, which we have duly considered. We are not persuaded that Defendant seeks review of a final, appealable order. Therefore, we dismiss.

A criminal defendant has the right of appeal “from the entry of any final judgment.” NMSA 1978, § 39-3-3(A)(1) (1972). This Court’s jurisdiction lies from final, appealable orders. See *Kelly Inn No. 102, Inc. v. Kapnison*, 113 N.M. 231, 824 P.2d 1033 (1992), *limited on other grounds by Trujillo v. Hilton of Santa Fe*, 115 N.M. 397, 851 P.2d 1064 (1993); see also *Montoya v. Anaconda Mining Co.*, 97 N.M. 1, 4, 635 P.2d 1323, 1326 (Ct. App. 1981) (observing that an appellate court will raise jurisdictional questions on its own motion), *overruled on other grounds as recognized by Healthsource, Inc. v. X-Ray Assoc. of N.M.*, 2005-NMCA-097, ¶ 12, 138 N.M. 70, 116 P.3d 861. An order is final if all issues of law and fact necessary to be determined have been determined and the case disposed of by the trial court to the fullest extent possible. See *Kelly Inn*, 113 N.M. at 236, 824 P.2d at 1038.

In the current case, Defendant filed an appeal from an order of remand from the district court that sent her to the Metropolitan Detention Center to be booked after a bench warrant issued for Defendant’s arrest for her failure to appear at an arraignment. [RP 19] In her appeal, Defendant contends that the charges were erroneously refiled in this case because Judge Martinez dismissed the charges in a previous case. Our notice explained that there have been no issues of law and fact fully decided and the case has not been fully resolved. We stated that Defendant has no right to appeal from the orders entered in her case, and we lack jurisdiction to review any action taken thus far. We advised Defendant to seek relief in district court.

In her response to our notice proposing to dismiss, Defendant states that our notice overlooked crucial matters: there was a lack of evidence to arrest her, have her driving privileges revoked, and have the stigma of a DWI charge on her driving record; the arraignment was held on Easter Sunday at which she pled not guilty; the court entered an order setting bond and conditions of her release; and the charges were erroneously refiled. [MIO 1] None of the matters Defendant listed have resolved any issues of law or fact to the fullest extent and therefore do not constitute final judgments from which she may appeal. We cannot review any action taken thus far. We continue to encourage Defendant to seek the appropriate relief first in district court and await entry of a final judgment before taking appeal to this Court.

For these reasons, we dismiss Defendant’s appeal.

IT IS SO ORDERED.

CELIA FOY CASTILLO, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

RODERICK T. KENNEDY, Judge