

**STATE V. RODRIGUEZ**

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

No. 35,167

COURT OF APPEALS OF NEW MEXICO

July 28, 2016

APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY, Lisa B. Riley, District  
Judge

**COUNSEL**

Hector H. Balderas, Attorney General, Santa Fe, NM, M. Anne Kelly, Assistant Attorney General, Albuquerque, NM, for Appellee

Bennett J. Baur, Chief Public Defender, Becca Salwin, Assistant Appellate Defender, Santa Fe, NM, for Appellant

**JUDGES**

JONATHAN B. SUTIN, Judge. WE CONCUR: JAMES J. WECHSLER, Judge, M. MONICA ZAMORA, Judge

**AUTHOR:** JONATHAN B. SUTIN

**MEMORANDUM OPINION**

**SUTIN, Judge.**

{1} Defendant has appealed from a number of convictions. We recently issued a second notice of proposed summary disposition in which we proposed to affirm in part

and reverse in part. Specifically, we proposed to reject Defendant's challenge to the sufficiency of the evidence, but proposed to vacate the sentence and remand for a new sentencing hearing. Defendant has filed a response that confirms his reliance upon the arguments set forth in his first memorandum in opposition. The State has filed a response indicating that it does not oppose our proposed summary disposition.

{2} Accordingly, for the reasons previously stated, we affirm Defendant's convictions, but vacate the sentence and remand for further proceedings.

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

**JONATHAN B. SUTIN, Judge**

**WE CONCUR:**

**JAMES J. WECHSLER, Judge**

**M. MONICA ZAMORA, Judge**