

STATE V. SANDOVAL

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
VICENTE T. SANDOVAL,
Defendant-Appellant.

NO. 31,802

COURT OF APPEALS OF NEW MEXICO

February 13, 2012

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY, William H. Brogan,
District Judge

COUNSEL

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

Vicente T. Sandoval, Pro Se-Appellant

JUDGES

TIMOTHY L. GARCIA, Judge. WE CONCUR: JAMES J. WECHSLER, Judge, LINDA M. VANZI, Judge

AUTHOR: TIMOTHY L. GARCIA

MEMORANDUM OPINION

GARCIA, Judge.

Vicente T. Sandoval, appearing pro se (Defendant) appeals from the district court's order denying his motion to withdraw his 2004 no contest plea. [RP 143]

This Court's calendar notice proposed to affirm the district court's order, because Defendant's motion was untimely filed, pursuant to Rule 5-801(B) NMRA (providing that "[a] motion to reduce a sentence may be filed within ninety (90) days after the sentence is imposed"); see also *State of New Mexico v. Esau Barraza*, 2011- NMCA-111, ¶ 12, ___ N.M. ___, ___ P.3d ___ (No. 29,807, Sept. 21, 2011) (Although our Supreme Court has the flexibility to construe a motion as a petition for habeas corpus even where it was not denominated as such, *Case v. Hatch*, 2008-NMSC -024, ¶ 12, 144 N.M. 20, 183 P.3d 905, this Court has no such jurisdiction or flexibility to do so. See Rule 5-802(H)(2) (requiring a defendant to petition for certiorari to our Supreme Court in order to obtain review of a district court's denial of a writ of habeas corpus.").

In the calendar notice, we also noted: (a) that Defendant's remedy would be to file a new petition for writ of habeas corpus in the district court; (b) that the district court does have jurisdiction to rule on petitions for writ of habeas corpus, pursuant to N.M. Const. art. VI, §13; and (c) that the New Mexico Supreme Court, not this Court, has jurisdiction to review an appeal from the district court's ruling, pursuant to N.M. Const. art. VI, § 3, and Rule 5-802(H)(2).

Defendant has filed a response to the calendar notice, agreeing with the proposed disposition. [Ct. App. File, Response]

For the reasons set forth in the calendar notice and in this opinion, we affirm the district court's order denying Defendant's motion to withdraw his plea.

IT IS SO ORDERED.

TIMOTHY L. GARCIA, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

LINDA M. VANZI, Judge