

<b>STATE V. STRAYER</b>
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**STATE OF NEW MEXICO,**  
Plaintiff-Appellant,  
**vs.**  
**PENNY STRAYER,**  
Defendant-Appellee.

No. 31,894

COURT OF APPEALS OF NEW MEXICO

July 9, 2012

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Angela J. Jewell,  
District Judge

**COUNSEL**

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

Jacqueline L. Cooper, Chief Public Defender, Eleanor Brogan, Assistant Appellate  
Defender, Santa Fe, NM, for Appellant

**JUDGES**

TIMOTHY L. GARCIA, Judge. WE CONCUR: CYNTHIA A. FRY Judge, J. MILES  
HANISEE, Judge

**AUTHOR:** TIMOTHY L. GARCIA

**MEMORANDUM OPINION**

**GARCIA, Judge.**

The State appeals a sentence on a probation violation in which the district court suspended an habitual offender sentence. In our notice, we proposed to reverse the

district court's suspension of the habitual offender sentence. Defendant has timely responded. We have considered her arguments and not being persuaded, we reverse.

In our notice, we recognized that a district court is authorized to suspend or defer an habitual offender sentence upon making "a specific finding that the prior felony conviction and the instant felony conviction are both for nonviolent felony offenses and that justice will not be served by imposing a mandatory sentence of imprisonment and that there are substantial and compelling reasons, stated on the record, for departing from the sentence." NMSA 1978, § 31-18-17(A) (2003). We proposed reversal, however, because the district court's finding was insufficient to satisfy the statute, which requires a showing of a substantial and compelling reason to depart from the sentence. The State's docketing statement indicated that the district court had orally ruled that Defendant was an addict, which was identified as the substantial and compelling reason to depart from the habitual sentence. Defendant's memorandum in opposition does not dispute that ruling.

Instead, Defendant argues that she made a record of compelling reasons to depart from the mandatory habitual sentence. We recognize that arguments were made to the district court indicating that Defendant would not be able to receive appropriate treatment if she was incarcerated because the programs had waiting lists and her sentence was not sufficiently long to get her in to those programs. Arguments were made that there were programs available in the community that she could take advantage of immediately. Thus, Defendant argues, the district court's compelling reason for departing from the habitual sentence was not simply that she was an addict, but also that she could not receive treatment for her addiction while in prison.

That is not, however, clear from the district court's ruling. It appears from the district court's ruling that it suspended the habitual sentencing simply because Defendant was an addict. By itself, that is simply not a compelling reason. We recognize that there may be circumstances relating to a particular defendant's addiction that might make it a compelling reason under the statute to suspend an habitual offender sentence. However, there is nothing in the specific finding of the district court here regarding why this defendant's addiction compels a departure from an habitual offender sentence.

In light of the statute's requirement of a specific finding to support suspension of an habitual offender sentence, we conclude that more was required here than a statement that Defendant was an addict, which was substantial and compelling. As nothing more was included in the district court's ruling, for the reasons stated herein and in the notice of proposed disposition, we reverse and remand for resentencing.

**IT IS SO ORDERED.**

**TIMOTHY L. GARCIA, Judge**

**WE CONCUR:**

**CYNTHIA A. FRY Judge**

**J. MILES HANISEE, Judge**