

STATE V. TINOCO

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
ROCCO TINOCO,
Defendant-Appellant.

No. 34,317

COURT OF APPEALS OF NEW MEXICO

May 14, 2015

APPEAL FROM THE DISTRICT COURT OF LUNA COUNTY, Jennifer E. DeLaney,
District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, for Appellee

Rocco Tinoco, Deming, NM, Pro Se Appellant

JUDGES

JAMES J. WECHSLER, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge,
CYNTHIA A. FRY, Judge

AUTHOR: JAMES J. WECHSLER

MEMORANDUM OPINION

WECHSLER, Judge.

{1} Defendant, in a self-represented capacity, appeals from the district court's order dismissing his appeal from his magistrate court guilty plea convictions for resisting, evading, or obstructing an officer and battery upon a household member. [RP 38, 76] This Court issued a notice proposing to affirm the district court's dismissal of

Defendant's appeal on the grounds that Defendant's unconditional guilty plea waived his right to appeal. Defendant has filed a memorandum in opposition, which we have duly considered. Unpersuaded, we affirm.

{2} In this Court's notice, we noted that "a voluntary guilty plea ordinarily constitutes a waiver of the defendant's right to appeal his conviction on other than jurisdictional grounds." *State v. Chavarria*, 2009-NMSC-020, ¶ 9, 146 N.M. 251, 208 P.3d 896 (internal quotation marks and citations omitted). [CN 2] In his response, Defendant makes numerous factual assertions that appear to challenge the sufficiency of the evidence [MIO 1–5], but he does not assert any fact or law that indicates his guilty plea was conditional and did not waive his right to appeal. Defendant asserts that his conviction must be reversed on jurisdictional grounds [MIO 1], but he does not support this assertion with either law or fact demonstrating a jurisdictional defect. We therefore conclude that Defendant has failed to point out any actual errors in fact or in law with this Court's notice. See *Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 ("Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law.").

{3} For the reasons stated above and in this Court's notice of proposed disposition, we affirm Defendant's conviction.

{4} IT IS SO ORDERED.

JAMES J. WECHSLER, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

CYNTHIA A. FRY, Judge