

**STATE V. WILSON**

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**STATE OF NEW MEXICO,  
Plaintiff-Appellee,  
v.  
JAMES WILSON,  
Defendant-Appellant.**

No. 35,137

COURT OF APPEALS OF NEW MEXICO

March 24, 2016

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY, Gary L. Clingman, District  
Judge

**COUNSEL**

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

James Wilson, Santa Fe, NM, Pro Se Appellant

**JUDGES**

JONATHAN B. SUTIN, Judge. WE CONCUR: M. MONICA ZAMORA, Judge, J. MILES HANISEE, Judge

**AUTHOR:** JONATHAN B. SUTIN

**MEMORANDUM OPINION**

**SUTIN, Judge.**

{1} Defendant James Wilson appeals from the alleged automatic denial of his motion to vacate his probation violation and his petition to amend order revoking probation and imposing judgment and sentence. This Court issued a calendar notice proposing to

dismiss Defendant's appeal for lack of a final order on the basis that Defendant's motions are not subject to automatic denial and are therefore still outstanding.

{2} In this Court's notice of proposed disposition, we pointed out that, generally, a criminal action may only be appealed to this Court upon the entry of a final judgment. See NMSA 1978, § 39-3-3(A)(1) (1972). We further noted that an appellate court does not generally have jurisdiction where a final judgment has not been entered, see, e.g., *State v. Griego*, 2004-NMCA-107, ¶ 22, 136 N.M. 272, 96 P.3d 1192, and that, in the absence of jurisdiction, we must dismiss. See *Thornton v. Gamble*, 1984-NMCA-093, ¶ 15, 101 N.M. 764, 688 P.2d 1268.

{3} To the extent Defendant asserted that his motions were automatically denied, we noted that case law from this Court and our Supreme Court indicates that, absent an explicit automatic denial provision, post-judgment motions are not generally deemed denied by the passage of time. See *Albuquerque Redi-Mix, Inc. v. Scottsdale Ins. Co.*, 2007-NMSC-051, ¶¶ 9-12, 142 N.M. 527, 168 P.3d 99; see also *State v. Romero*, 2014-NMCA-063, ¶ 7, 327 P.3d 525. We noted that Defendant had not directed this Court to any such authority. See *Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031, ¶ 28, 320 P.3d 482 ("Where a party cites no authority to support an argument, we may assume no such authority exists.").

{4} Defendant filed a response to this Court's notice of proposed disposition. Defendant has not, however, provided this Court with authority establishing that a final order exists in this case. See *Hennessey 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."). As a result, this Court has no choice but to dismiss for lack of jurisdiction. To the extent Defendant points out that we have not addressed the merits of his appeal, we note that, in the absence of jurisdiction, this Court remains unable to do so.

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

**JONATHAN B. SUTIN, Judge**

**WE CONCUR:**

**M. MONICA ZAMORA, Judge**

**J. MILES HANISEE, Judge**