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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-37599

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

JESUS CASTILLO,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY
Kea W. Riggs, District Judge

Hector H. Balderas, Attorney General
Santa Fe, NM

for Appellee

L. Helen Bennett, P.C.
L. Helen Bennett
Albuquerque, NM

for Appellant

MEMORANDUM OPINION

VARGAS, Judge.

{1} Defendant appeals from his conviction, after a jury trial, of criminal sexual contact of a child under thirteen (CSCM), contrary to NMSA 1978, Section 30-9-13(C)(1) (2003). In this Court's notice of proposed disposition, we proposed summary affirmance. Defendant filed a memorandum in opposition, which we have duly considered. Remaining unpersuaded, we affirm.

{2} In his memorandum in opposition, Defendant repeats the presentation of the issues and facts asserted and argued in Defendant's docketing statement. [MIO 2]

Defendant has not asserted any facts, law, or argument that persuade this Court that our notice of proposed disposition was erroneous. 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.”); *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that a party responding to a summary calendar notice must come forward and specifically point out errors of law and fact, and the repetition of earlier arguments does not fulfill this requirement), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374.

{3} To the extent that Defendant suggests that there may be grounds to argue ineffective assistance of trial counsel, we agree that such a claim is most properly brought pursuant to habeas corpus. *State v. Grogan*, 2007-NMSC-039, ¶ 9, 142 N.M. 107, 163 P.3d 494 (expressing a preference for habeas corpus proceedings to address ineffective assistance of counsel claims).

{4} Accordingly, for the reasons stated in our notice of proposed disposition and herein, we affirm Defendant’s conviction.

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

JULIE J. VARGAS, Judge

WE CONCUR:

KRISTINA BOGARDUS, Judge

BRIANA H. ZAMORA, Judge