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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-38396

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

MANUEL G. LARA,

Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT OF GUADALUPE COUNTY
Gerald E. Baca, District Judge**

Hector H. Balderas, Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Santa Fe, NM
Steven J. Forsberg, Assistant Appellate Defender
Albuquerque, NM

for Appellant

MEMORANDUM OPINION

VARGAS, Judge.

{1} Defendant appeals his conviction, following a jury trial, for unlawful taking of a motor vehicle. This Court issued a notice of proposed disposition, proposing to affirm. Defendant filed a memorandum in opposition, which we have duly considered. Unpersuaded, we affirm.

{2} On appeal, Defendant contends that he was prevented by his counsel from testifying, infringing on his constitutional right to do so, and that, consequently, he

received ineffective assistance of counsel. Our notice proposed to affirm on the grounds that the alleged strategic decision-making by counsel to dissuade Defendant from testifying was not part of the record, and therefore a habeas corpus petition would be the appropriate avenue for his claim of ineffective assistance of counsel. [CN 3] In his memorandum in opposition, Defendant raises no new facts or arguments, and states that the private conversations with his attorney on which his claims are based are not part of the available record. [MIO 1] See *State v. Roybal*, 2002-NMSC-027, ¶ 3, 132 N.M. 657, 54 P.3d 61 (“If facts necessary to a full determination are not part of the record, an ineffective assistance claim is more properly brought through a habeas corpus petition[.]”).

{3} Accordingly, for the reasons stated above and in this Court’s notice of proposed disposition, we affirm.

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

JULIE J. VARGAS, Judge

WE CONCUR:

KRISTINA BOGARDUS, Judge

ZACHARY A. IVES, Judge