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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-38844

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

MOSES MARTINEZ,

Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY
Fred T. Van Soelen, District Judge**

Hector H. Balderas, Attorney General
Benjamin L. Lammons, Assistant Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

HANISEE, Chief Judge.

{1} Defendant appeals from the district court's order revoking his probation and sentencing him to 285 days in a detention center, a sentence that included absconder time. We issued a notice proposing to summarily reverse and remand for resentencing on grounds that the district court erred by concluding that Defendant absconded and therefore was not entitled to credit against his probation for the full time he served. The State has filed a response to our notice, in which it agrees that insufficient evidence was presented that Defendant was a fugitive or that his probation revocation warrant could be served from the date of its issuance to the date of its execution, as required to deny

probation credit under NMSA 1978, Section 31-21-15(B), (C) (2016). [Response 1] On this basis, the State informed this Court that it does not oppose our notice proposing summary reversal. Accordingly, for the reasons set forth in our notice, we reverse the district court's order revoking Defendant's probation and remand for resentencing.

{2} IT IS SO ORDERED.

J. MILES HANISEE, Chief Judge

WE CONCUR:

KRISTINA BOGARDUS, Judge

ZACHARY A. IVES, Judge