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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-38437

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

JUSTIN JOHNSON,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF VALENCIA COUNTY

Cindy M. Mercer, District Judge

Hector H. Balderas, Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Kathleen T. Baldrige, Assistant Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

HANISEE, Chief Judge.

{1} Defendant appeals a number of convictions following a jury trial. In this Court's notice of proposed disposition, we proposed to summarily affirm. After consideration of Defendant's memorandum in opposition to our first notice of proposed disposition, we issued a second notice of proposed disposition. We again proposed to summarily affirm. Defendant filed a second memorandum in opposition, which relied on the facts and arguments contained within his first memorandum in opposition and informed this Court that Defendant did not intend to file a second memorandum in opposition containing additional facts or argument. Remaining unpersuaded, we affirm.

{2} Defendant has not asserted any fact, law, or argument in his second memorandum in opposition that persuades us that our first and second notices of proposed disposition were erroneous. See *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point out errors of law and fact, and the repetition of earlier arguments does not fulfill this requirement), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374; see also *Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754,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.”). Accordingly, for the reasons stated in our first and second notices of proposed disposition and herein, we affirm Defendant’s convictions.

{3} IT IS SO ORDERED.

J. MILES HANISEE, Chief Judge

WE CONCUR:

JACQUELINE R. MEDINA, Judge

MEGAN P. DUFFY, Judge