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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Filing Date: February 4, 2021

No. S-1-SC-37543

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

DAVID STEVEN BARBER,

Defendant-Appellee.

**APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Brett R. Loveless, District Judge**

Hector H. Balderas, Attorney General
M. Victoria Wilson, Assistant Attorney General
Santa Fe, NM

for Appellant

Jeffery J. Buckels, Esq.
Albuquerque, NM

for Appellee

DISPOSITIONAL ORDER

{1} WHEREAS, this matter came before the Court upon the State's appeal from the district court's dismissal of Defendant's first-degree, felony-murder charge pursuant to NMSA 1978, Section 39-3-3(B)(1) (1972), which provides the right of appeal from an "order dismissing a complaint, indictment or information as to any one or more counts." See also *State v. Smallwood*, 2007-NMSC-005, ¶¶ 10-11, 141 N.M. 178, 152 P.3d 821 (concluding that cases "where a defendant may possibly be sentenced to life imprisonment or death" are properly appealed directly to this Court);

{2} WHEREAS, the State notified this Court that *State v. Elexus Jolaine Groves & Paul Anthony Garcia*, S-1-SC-37039, raised the same legal issue and was currently

pending on the Court's general calendar. See Rule 12-202(G) NMRA (providing that "[a] party has a continuing obligation to alert the appellate court to any related appeals that come to the party's attention");

{3} WHEREAS, this Court has issued an opinion, *State v. Elexus Jolaine Groves & Paul Anthony Garcia*, 2021-NMSC- 003, ___ P.3d ___ (S-1-SC-37039, Nov. 30, 2020);

{4} WHEREAS, this Court concludes that the issue of law presented in this case was decided by the Court's disposition in *State v. Elexus Jolaine Groves & Paul Anthony Garcia*; and

{5} WHEREAS, the Court exercises its discretion under Rule 12-405(B)(1) and (2) NMRA to dispose of a case by nonprecedential order rather than a formal opinion;

{6} NOW, THEREFORE, IT IS ORDERED that the district court's order dismissing Defendant's first-degree, felony-murder charge alternative to Count 1 is vacated, and this matter is remanded for further proceedings.

{7} IT IS SO ORDERED.

MICHAEL E. VIGIL, Chief Justice

BARBARA J. VIGIL, Justice

C. SHANNON BACON, Justice

DAVID K. THOMSON, Justice

**JUDITH K. NAKAMURA, Justice,
Retired, Sitting by designation**