

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico
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2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellant,



Mark Reynolds

4 v.

No. A-1-CA-40737

5 **CONROY WILLIAMS,**

6 Defendant-Appellee.

7 **APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY**

8 **Steven Blankinship, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 Leland M. Churan, Assistant Attorney General

12 Albuquerque, NM

13 for Appellee

14 Bennett J. Baur, Chief Public Defender

15 Tania Shahani, Assistant Appellate Defender

16 Santa Fe, NM

17 for Appellant

18 **MEMORANDUM OPINION**

19 **HANISEE, Judge.**

20 {1} This matter was submitted to the Court on the State's brief in chief pursuant

21 to the Administrative Order for Appeals in Criminal Cases from the Second,

22 Eleventh, and Twelfth Judicial District Courts in *In re Pilot Project for Criminal*

23 *Appeals*, No. 2022-002, effective November 1, 2022. Following consideration of the

1 brief in chief, this Court assigned this matter to Track 2 for additional briefing. Now
2 having considered the brief in chief, answer brief, and reply brief, we reverse the
3 district court.

4 {2} The State is appealing from a district court order dismissing the grand jury
5 indictment. As discussed below, the dispositive facts are not in dispute. “Whether a
6 district court properly grants or denies a defendant’s motion to dismiss an indictment
7 on purely legal grounds presents a question of law that we review de novo.” *State v.*
8 *Winn*, 2019-NMCA-011, ¶ 9, 435 P.3d 1247.

9 {3} This case began in August 2021 with the filing of a criminal complaint in
10 magistrate court, charging Defendant with battery upon a peace officer, criminal
11 damage to property, assault upon a peace officer, and resisting, evading, or
12 obstructing an officer. [RP 9] The proceedings were transferred to the district court
13 on two occasions, first for a consideration of pretrial detention, and later to address
14 Defendant’s motion for competency evaluation. [RP 88, 96] On January 25, 2022,
15 the district court found Defendant competent and remanded the case back to
16 magistrate court. [RP 185] Because Defendant was in custody, Rule 6-202(A)
17 NMRA required that a preliminary examination be in place within ten days of that
18 date. This deadline was not satisfied, and no motion to dismiss for failure to comply
19 with this deadline was filed prior to a true bill being returned by the district court
20 grand jury on March 3, 2022, which was filed on March 9, 2022. [RP 1, 191] On

1 June 14, 2022, Defendant filed a motion to dismiss in district court, arguing that the
2 State had failed to satisfy the ten-day preliminary hearing deadline in the magistrate
3 court, and arguing that the ten-day limit should be enforced irrespective of the
4 indictment. [RP 290] The district court granted the motion to dismiss on the ground
5 that the indictment was untimely and the delays in this case were prejudicial to
6 Defendant. [RP 317]

7 {4} In *State v. Gardea*, 1999-NMCA-116, ¶ 12, 128 N.M. 64, 989 P.2d 439, this
8 Court held that an indictment supersedes a complaint by operation of law. The failure
9 to move for dismissal prior to the indictment waives a challenge to time deadlines in
10 the lower court. *Id.* ¶ 9. Rule 5-201(D) NMRA describes an indictment as follows:

11 An indictment is a written statement returned by a grand jury containing
12 the essential facts constituting the offense, common name of the
13 offense, and, if applicable, a specific section number of the New
14 Mexico Statutes Annotated which defines the offense. All indictments
15 shall be signed by the foreperson of the grand jury.

16 {5} In the present case, both the magistrate court’s preliminary examination and
17 the filing of the indictment occurred on the same day, March 9, 2022. [BIC 4] At the
18 hearing on Defendant’s June 14, 2022 motion to dismiss, Defendant argued that he
19 had raised the timeliness issue at the March 9, 2022 preliminary examination, and
20 the grand jury indictment was not filed until later that day. [RP 313] A magistrate
21 court register of actions also indicates that a dismissal without prejudice had also
22 been entered on March 9. [RP 308] *See* Rule 6-202(A)(3) (stating that a dismissal

1 without prejudice for the failure to hold a timely preliminary examination “shall not
2 prevent the prosecution from proceeding either by indictment or criminal
3 information in the district court”). By choosing to pursue an indictment, and having
4 the grand jury make the probable cause determination on March 3, 2022, the State
5 satisfied its probable cause showing before Defendant raised the timeliness issue at
6 the March 9 hearing. *See State v. Ayon*, 2023-NMSC-025, ¶ 17 (observing that a
7 preliminary hearing and a grand jury proceeding share the purpose of determining
8 probable cause).

9 {6} We are also unpersuaded by Defendant’s attempts to distinguish *Gardea*. [AB
10 11-12] Any factual distinction with this case does not undermine the central
11 takeaway from that opinion, which is that the failure to timely object in the lower
12 court waives the right to raise the procedural issue for the first time in district court.
13 *See* 1999-NMCA-116, ¶ 9. We also decline to depart from *Gardea* and to hold that
14 the ten-day limit in the magistrate court applies in the district court irrespective of
15 whether a defendant has made a timely objection below. In effect, Defendant is
16 advocating that the ten-day time limit in Rule 6-202(A) should be self-executing in
17 that it bars any probable cause determination under Rule 5-201(D). Defendant
18 maintains that such a requirement is necessary where an individual remains
19 incarcerated. [AB 13-14] Not only does this attempt to read language into our rules
20 that is not there, it ignores the language in Rule 6-202(A)(3) that any dismissal does

1 not bar indictment. We will not read language into the rule that would effectively
2 limit the grand jury's authority to make the probable cause determination where a
3 defendant has not timely raised an objection in the lower court. *See State v. Elam*,
4 1989-NMCA-006, ¶ 16, 108 N.M. 268, 771 P.2d 597 (“Appellate courts will not
5 read language into rules which [our S]upreme [C]ourt did not see fit to add unless it
6 is necessary to conform to the obvious intent, or to prevent absurdity.”). Finally, the
7 ten-day limit that applies to incarcerated defendants is a recognition of the restraints
8 on their liberty, and they could move for dismissal of the charges at any time after
9 the deadline has passed. The failure to do so until after a probable cause
10 determination had been made by a grand jury constitutes a waiver of the issue.

11 {7} For the reasons set forth above, we reverse the district court.

12 {8} **IT IS SO ORDERED.**

13 
14 **J. MILES HANISEE, Judge**

15 **WE CONCUR:**

16 
17 **ZACHARY A. IVES, Judge**

18 
19 **JANE B. YOHALEM, Judge**