

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

Court of Appeals of New Mexico  
Filed 6/21/2023 10:08 AM

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,



Mark Reynolds

4 v.

**No. A-1-CA-41005**

5 **PETE EVANS,**

6 Defendant-Appellant.

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

8 **James B. Foy, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender

13 Kathleen T. Baldrige, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **IVES, Judge.**

18 {1} Defendant appeals the district court's judgment and sentence, convicting him  
19 of unlawful taking of a motor vehicle, pursuant to a plea agreement. We issued a  
20 notice proposing to summarily affirm. Defendant has responded with a  
21 memorandum in opposition to our notice. After due consideration, we are  
22 unpersuaded that Defendant has demonstrated error and affirm.

1 {2} On appeal, Defendant contends that his plea was not knowing and voluntary,  
2 due to the ineffective assistance of counsel, and, therefore, the district court erred by  
3 denying his motion to withdraw the plea. [MIO 4-9] Defendant’s memorandum in  
4 opposition corrects some deficiencies in the docketing statement by providing a  
5 more comprehensive explanation of the operative facts. However, Defendant does  
6 not persuade this Court that our proposed analysis was incorrect. *See Hennessy v.*  
7 *Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have  
8 repeatedly held that, in summary calendar cases, the burden is on the party opposing  
9 the proposed disposition to clearly point out errors in fact or law.”); *State v.*  
10 *Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that “[a]  
11 party responding to a summary calendar notice must come forward and specifically  
12 point out errors of law and fact” and the repetition of earlier arguments does not  
13 fulfill this requirement), *superseded by statute on other grounds as stated in State v.*  
14 *Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. We remain persuaded that the record  
15 does not support Defendant’s contentions about his plea or counsel’s performance.  
16 *See State v. Rojo*, 1999-NMSC-001, ¶ 53, 126 N.M. 438, 971 P.2d 829 (“Where  
17 there is a doubtful or deficient record, every presumption must be indulged by the  
18 reviewing court in favor of the correctness and regularity of the [trial] court’s  
19 judgment.” (internal quotation marks and citation omitted)); *State v. Sandoval*, 1966-  
20 NMSC-143, ¶ 5, 76 N.M. 570, 417 P.2d 56 (refusing to assume facts that do not

1 appear in the record in order to address an allegation of error on appeal). Defendant's  
2 arguments are more appropriately pursued in post-judgment proceedings where he  
3 may develop the necessary record. *See, e.g., State v. Crocco*, 2014-NMSC-016, ¶ 14,  
4 327 P.3d 1068 (“If facts necessary to a full determination are not part of the record,  
5 an ineffective assistance claim is more properly brought through a habeas corpus  
6 petition[.]”).

7 {3} Accordingly, for the reasons stated in this Court's notice of proposed  
8 disposition and herein, we affirm.

9 {4} **IT IS SO ORDERED.**

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**ZACHARY A. IVES, Judge**

12 **WE CONCUR:**

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**J. MILES HANISEE, Judge**

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16 \_\_\_\_\_  
**JANE B. YOHALEM, Judge**