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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,

4 v.

5 **JESSE JAMES YOUNG,**

6 Defendant-Appellee.



Mark Reynolds

No. A-1-CA-40649

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

8 **Britt Baca-Miller, District Court Judge**

9 Raúl Torrez, Attorney General

10 Emily C. Tyson-Jorgenson, Assistant Attorney General

11 Santa Fe, NM

12 for Appellant

13 Bennett J. Baur, Chief Public Defender

14 Santa Fe, NM

15 Mark A. Peralta-Silva, Assistant Appellate Defender

16 Albuquerque, NM

17 for Appellee

18 **MEMORANDUM OPINION**

19 **HENDERSON, 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 for the
3 following reasons.

4 {2} The State appeals from the district court’s denial of the State’s request to
5 impose a statutory firearm enhancement, NMSA 1978, § 31-18-16 (2022), to
6 Defendant’s conviction for shooting at or from a motor vehicle. In its order, the
7 district court concluded that imposition of the firearm enhancement would violate
8 Defendant’s right to be free from double jeopardy “[b]ecause the use of a firearm is
9 always required for this specific charge[.]” [RP 224-25] Determining whether a
10 sentencing enhancement violates double jeopardy is a question of law, which we
11 review de novo. *See State v. Torres*, 2018-NMSC-013, ¶ 17, 413 P.3d 467 (“A
12 double jeopardy challenge presents a question of constitutional law, which we
13 review de novo.”); *State v. Redhouse*, 2011-NMCA-118, ¶ 5, 269 P.3d 8 (“We
14 review [the d]efendant’s contention that modification of [the] sentence violated
15 [their] constitutional guarantee against double jeopardy under a de novo standard of
16 review.”).

17 {3} The State argues the district court’s ruling was erroneous “because [our] New
18 Mexico Supreme Court has specifically held that the Legislature intended to create
19 multiple punishments for the use of a firearm during the commission of a noncapital
20 felony[.]” [BIC 1] We agree. In *State v. Baroz*, 2017-NMSC-030, 404 P.3d 769, our

1 Supreme Court rejected the argument that imposition of the firearm enhancement
2 violates double jeopardy where the use of a firearm is an element of the underlying
3 conviction. *Id.* ¶¶ 20-27; *see also State v. Comitz*, 2019-NMSC-011, ¶ 43, 443 P.3d
4 1130 (rejecting the defendant’s argument that enhancement of the sentence based on
5 the presence of a firearm resulted in double jeopardy); *State v. Branch*, 2018-
6 NMCA-031, ¶ 33, 417 P.3d 1141 (explaining that our Supreme Court has rejected
7 the “contention that the firearm enhancement violates double jeopardy because use
8 of a firearm is an element of the underlying crime”).

9 {4} Defendant asserts that “the legislative policy behind the firearm enhancement
10 statute is meant to enhance certain noncapital felonies, but such a reading must be
11 limited to those crimes that do not necessarily involve the use of a firearm.” [AB 11]
12 However, our Supreme Court’s rationale in *Baroz* is not limited in such a manner,
13 nor does it depend in any way on a distinction between crimes that are always
14 committed with a firearm and those that are only sometimes committed with a
15 firearm. *See Baroz*, 2017-NMSC-030, ¶ 27 (“The very nature of a firearm
16 enhancement is to require the sentencing judge to increase or enhance the basic
17 sentence that applies to the crime. By enacting the enhancement, the Legislature
18 intended to authorize greater punishment for noncapital felonies committed with a
19 firearm.”). Rather, this Court expressly rejected the notion that “the firearm
20 enhancement violates double jeopardy because use of a firearm is an element of the

1 underlying crime.” *Id.* ¶ 20. Accordingly, we must conclude that the reasoning of
2 *Baroz* applies to Defendant’s sentence for shooting at or from a motor vehicle.
3 Although Defendant asserts our Supreme Court’s analysis in *Baroz* is flawed [AB
4 9-10], we are not an appropriate audience for that argument because this Court is not
5 at liberty to overrule precedents of our Supreme Court. *See State ex rel. Martinez v.*
6 *City of Las Vegas*, 2004-NMSC-009, ¶ 22, 135 N.M. 375, 89 P.3d 47 (“[T]he Court
7 of Appeals is bound by Supreme Court precedent.”).

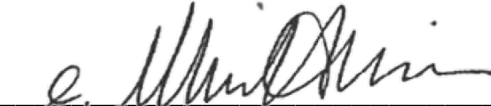
8 {5} For the foregoing reasons, we conclude that application of the statutory
9 firearm enhancement does not violate Defendant’s right to be free from double
10 jeopardy. We therefore reverse the district court’s order and remand for imposition
11 of the firearm enhancement.

12 {6} **IT IS SO ORDERED.**

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14 _____
SHAMMARA H. HENDERSON, Judge

15 **WE CONCUR:**

16 
17 _____
JENNIFER L. ATTKREF, Chief Judge

18 
19 _____
J. MILES HANISEE, Judge