


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

Court of Appeals of New Mexico
Filed 5/22/2024 9:58 AM

2 **STATE OF NEW MEXICO,**



Ramon J. Maestas
Chief Clerk

3 Plaintiff-Appellee,

4 v.

No. A-1-CA-41348

5 **RODNEY HODGES,**

6 Defendant-Appellant.

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

8 **Albert J. Mitchell, Jr., District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender

13 Santa Fe, NM

14 Steven J. Forsberg, Assistant Appellate Defender

15 Albuquerque, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **BOGARDUS, Judge.**

19 {1} Defendant is appealing his conviction for criminal solicitation to commit
20 bribery of a witness. We issued a calendar notice proposing to affirm. Defendant has
21 responded with a memorandum in opposition. We affirm.

22 {2} Issues 1, 3-5: Defendant's memorandum in opposition does not raise any new
23 arguments on these issues. We therefore deem them to be abandoned. *See State v.*

1 *Johnson*, 1988-NMCA-029, ¶ 8, 107 N.M. 356, 758 P.2d 306 (explaining that when
2 a case is decided on the summary calendar, an issue is deemed abandoned when a
3 party fails to respond to the proposed disposition of that issue).

4 {3} Issue 2: Defendant continues to claim that the district court erred in excluding
5 a letter that Defendant wrote to his wife. [MIO 2] In this letter, quoted in the
6 docketing statement, he appears to show remorse for having earlier solicited his wife
7 to commit bribery of a witness. [DS 3-4] Our calendar notice proposed to hold that
8 the letter constituted hearsay, and in any event Defendant had not been prejudiced
9 because the district court changed its ruling, admitting the letter into evidence. [DS
10 7] We therefore also proposed to hold that Defendant has not established prejudice.
11 *See In re Ernesto M., Jr.*, 1996-NMCA-039, ¶ 10, 121 N.M. 562, 915 P.2d 318 (“An
12 assertion of prejudice is not a showing of prejudice.”).

13 {4} In Defendant’s memorandum in opposition, he states that the judge did not
14 rule on the hearsay objection, and the letter could have come in under the residual
15 exception to the hearsay rule. *See* Rule 11-807(A) NMRA. That catch-all exception
16 applies when several requirements are satisfied, none of which exist here. In addition
17 to being self-serving, the letter is not relevant because the crime of solicitation was
18 complete by the time Defendant completed his phone call with his wife, where he
19 had asked his wife to commit bribery of a witness. [RP 232] Therefore, Defendant

1 has still not established that any error occurred, or that he was prejudiced by the
2 error.

3 {5} For the reasons set forth above, we affirm.

4 {6} **IT IS SO ORDERED.**

5 
6 **KRISTINA BOGARDUS, Judge**

7 **WE CONCUR:**

8 
9 **J. MILES HANISEE, Judge**

10 
11 **GERALD E. BACA, Judge**