

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

Court of Appeals of New Mexico

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2 **IN THE MATTER OF THE PETITION FOR**
3 **EXPUNGEMENT OF ARREST AND PUBLIC**
4 **RECORDS OF JAY ZOCCOLI,**



Ramon J. Maestas
Chief Clerk

5 Petitioner-Appellant.

6 **No. A-1-CA-41271**

7 **APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**
8 **Conrad F. Perea, District Court Judge**

9 Jonathan Diener
10 Mule Creek, NM

11 for Appellant

12 **MEMORANDUM OPINION**

13 **YOHALEM, Judge.**

14 {1} Petitioner Jay Zoccoli appeals the district court's order denying in part his
15 petition to expunge his prior convictions in D-307-CR-2004-00493, which included
16 two convictions for contributing to the delinquency of a minor, three counts of
17 conspiracy to commit distribution of marijuana, and three counts of distribution of
18 marijuana. [RP 87-91] Because the expungement statute at issue "do[es] not apply
19 to an offense committed against a child," our notice of proposed disposition
20 proposed to affirm. Petitioner filed a memorandum in opposition, which we have
21 duly considered. Remaining unpersuaded, we affirm.

1 {2} Petitioner’s memorandum does not dispute our proposal that his convictions
2 for contributing to the delinquency of a minor are offenses “committed against a
3 child” for the purposes of NMSA 1978, Section 29-3A-5(G) (2019). Further,
4 Petitioner has not asserted any new facts, relevant law, or argument that persuade us
5 that our notice of proposed disposition was erroneous. *See State v. Mondragon*,
6 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that “[a] party
7 responding to a summary calendar notice must come forward and specifically point
8 out errors of law and fact,” and the repetition of earlier arguments does not fulfill
9 this requirement (internal quotation marks and citation omitted)), *superseded by*
10 *statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d
11 374. Instead, Petitioner reiterates that because New Mexico has subsequently
12 legalized the sale of recreational marijuana, his convictions for contributing to the
13 delinquency of a minor should be expunged. [MIO 1-3]

14 {3} With regard to contributing to the delinquency of a minor, our Supreme Court
15 has concluded:

16 We always have relied on juries to determine what acts constitute
17 contributing to delinquency in a particular case. The common sense of
18 the community, as well as the sense of decency, the propriety, and the
19 morality which most people entertain, is sufficient to apply the statute
20 to each particular case, and point out what particular conduct is
21 rendered criminal by it.

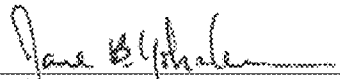
22 *State v. Trevino*, 1993-NMSC-067, ¶ 8, 116 N.M. 528, 865 P.2d 1172 (internal
23 quotation marks and citation omitted). The broad purpose of the Legislature in

1 enacting the statute was to protect children from harm. *Id.* ¶ 12 (collecting cases).
2 Petitioner’s memorandum gives us no reason to doubt that his convictions for
3 contributing to the delinquency of a minor involve offenses “committed against”
4 children.

5 {4} Ultimately, Petitioner’s assertion that some of the conduct underlying his
6 convictions is no longer proscribed by statute is simply not a basis for expungement
7 pursuant to Section 29-3A-5, under which Petitioner proceeded below, and pursuant
8 to which “an offense committed against a child” may not be expunged. *See Cordova*
9 *v. Cline*, 2021-NMCA-022, ¶ 7, 489 P.3d 957 (“If the statute is clear or
10 unambiguous, we interpret it according to its plain language and refrain from further
11 statutory interpretation.”). Petitioner provides us with no authority indicating the
12 contrary. *See Curry v. Great Nw. Ins. Co.*, 2014-NMCA-031, ¶ 28, 320 P.3d 482
13 (“Where a party cites no authority to support an argument, we may assume no such
14 authority exists.”). Consequently, we conclude that the district court did not err in
15 declining to expunge Petitioner’s convictions based on Section 29-3A-5.

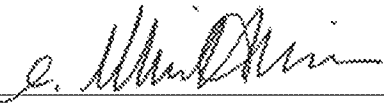
16 {5} Accordingly, for these reasons and those stated in our notice of proposed
17 disposition, we affirm.

18 {6} **IT IS SO ORDERED.**

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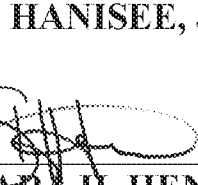
JANE B. YOHALEM, Judge

1 WE CONCUR:

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J. MILES HANISEE, Judge

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SHAMMARA H. HENDERSON, Judge