


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

2 **STATE OF NEW MEXICO,**

Court of Appeals of New Mexico  
Filed 2/18/2025 10:13 AM

3 Plaintiff-Appellee,



Ramon J. Maestas  
Chief Clerk

4 v.

**No. A-1-CA-41904**

5 **LEONARDO PEREZ-CLEMENTE,**

6 Defendant-Appellant.

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

8 **Mark Sanchez, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 Serena R. Wheaton, Assistant Solicitor General

12 Albuquerque, NM

13 for Appellee

14 Bennett J. Baur, Chief Public Defender

15 Santa Fe, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **WRAY, Judge.**

19 {1} Defendant Leonard Perez-Clemente appeals from the district court's  
20 restitution order under NMSA, 1978, Section 31-17-1 (2005), after Defendant  
21 pleaded guilty to one count of aggravated assault. The district court found that  
22 Defendant had breached an implied contract between Defendant and Victim and  
23 ordered that Defendant pay \$10,000. This Court issued a calendar notice proposing

1 to reverse because the district court’s order exceeded its authority under Section 31-  
2 17-1(A). The State filed a memorandum in opposition, which we have duly  
3 considered. Unpersuaded, we reverse the district court’s restitution order.

4 {2} The State contends that the district court correctly applied the plain language  
5 of Section 31-17-1 when ordering Defendant pay restitution for the breach of an  
6 implied contract. [MIO 4-8] The State argues that our proposed reversal erred  
7 because “Defendant’s criminal activity of aggravated assault was simultaneous to  
8 his breach of the parties[’] monetary contract” [MIO 5-6], Defendant “confirmed  
9 that he had a monetary dispute with Victim which is why Victim came to his  
10 residence,” and Defendant committed aggravated assault. [MIO 6] Therefore, the  
11 district court correctly analyzed Section 31-17-1(A)’s requirements for restitution.  
12 The State additionally argues that this Court’s reliance on *State v. Herrera*, 2024-  
13 NMCA-025, 544 P.3d 260, is misplaced because *Herrera* is factually  
14 distinguishable. [MIO 8-10] Defendant here was “charged and convicted of only one  
15 crime” unlike the defendant in *Herrera*. [MIO 8] *See id.* ¶¶ 1, 7, 17 (reversing the  
16 district court’s restitution order requiring the defendant pay for nine counts of  
17 fraudulent use of a credit card because the defendant was only convicted of one  
18 count).

19 {3} We proposed to reverse the district court because Defendant pleaded guilty  
20 only to aggravated assault, Defendant was not charged with any contract related

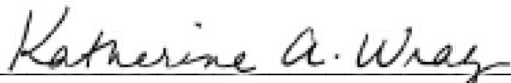
1 financial crimes, and therefore the restitution order “was based on uncharged  
2 conduct and not limited by and directly related to Defendant’s plea to aggravated  
3 assault.” [CN 2] *See id.* ¶ 17 (“The term criminal activities in this statute refers to  
4 the crime for which there is a guilty verdict, and this Court has said that restitution  
5 must be limited by and directly related to those criminal activities.” (text only)  
6 (citation omitted)). The State does not now direct this Court to any new fact, law, or  
7 argument that persuades us that our notice of proposed disposition was incorrect.  
8 *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our  
9 courts have repeatedly held that, in summary calendar cases, the burden is on the  
10 party opposing the proposed disposition to clearly point out errors in fact or law.”);  
11 *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating  
12 that “[a] party responding to a summary calendar notice must come forward and  
13 specifically point out errors of law and fact,” and the repetition of earlier arguments  
14 does not fulfill this requirement), *superseded by statute on other grounds as stated*  
15 *in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374.

16 {4} Despite the State’s framing of Defendant’s conviction, Section 31-17-1(A)  
17 limits restitution only to actual damages resulting from a defendant’s criminal  
18 activities. “‘Criminal activities’ includes any crime for which there is a plea of guilty  
19 or a verdict of guilty.” Section 31-17-1(A)(3). Defendant pleaded guilty only to  
20 aggravated assault and did not plead guilty to a crime involving a breach of contract,

1 implied or otherwise. Although the State contends that Defendant breached the  
2 implied contract by committing aggravated assault [MIO 5-6], breach of contract is  
3 not an element of aggravated assault and Defendant’s criminal conduct—as defined  
4 by Section 31-17-1—does not encompass the breach of an implied contract. *See*  
5 NMSA 1978, § 30-3-2 (1963) (listing the methods of committing aggravated  
6 assault); *see also* UJI 14-306 NMRA (listing the elements the state must establish  
7 beyond a reasonable doubt for a conviction of aggravated assault under Section 30-  
8 3-2(A)). Finally, the State misunderstands this court’s reliance on *Herrera*. Although  
9 the conduct in *Herrera* and the instant case are distinguishable, *Herrera* supports  
10 our analysis that Defendant cannot be ordered to pay restitution for an act not part  
11 of Defendant’s criminal activities as defined by Section 31-17-1(A)(3). *See Herrera*,  
12 2024-NMCA-025, ¶ 17.

13 {5} For the reasons stated in our notice of proposed disposition and herein, we  
14 reverse the district court’s restitution order.

15 {6} **IT IS SO ORDERED.**

16   
17 KATHERINE A. WRAY, Judge

18 **WE CONCUR:**

19   
20 JACQUELINE R. MEDINA, Judge

21   
22 SHAMMARA H. HENDERSON, Judge