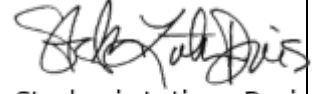


1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico  
Filed 4/14/2025 12:16 PM

2 **ALLAN SEAGER,**

3 Plaintiff-Appellant,



Stephanie Latimer Davis  
Acting Chief Clerk

4 v.

**No. A-1-CA-42178**

5 **GARY MARCIEL, Director of**  
6 **Adult Prisons; NEW MEXICO**  
7 **CORRECTIONS DEPARTMENT,**

8 Defendants-Appellees.

9 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

10 **Kathleen McGarry Ellenwood, District Court Judge**

11 Allan Seager  
12 Hobbs, NM

13 Pro Se Appellant

14 Raúl Torrez, Attorney General  
15 Santa Fe, NM  
16 Sarah M. Karni, Assistant Solicitor General  
17 Albuquerque, NM

18 for Appellees

19 **MEMORANDUM OPINION**

20 **HANISEE, Judge.**

21 {1} The opinion entered on March 17, 2025, is hereby withdrawn, and this opinion  
22 is substituted in its place, following Plaintiff's memorandum in opposition, filed  
23 March 19, 2025.

1 {2} Plaintiff appeals from the district court’s order denying Plaintiff’s petition for  
2 injunction. We issued a calendar notice proposing to affirm. Plaintiff has filed an  
3 untimely memorandum in opposition, which we have duly considered.  
4 Unpersuaded, we affirm.

5 {3} Plaintiff continues to assert that the district court erred in denying his petition  
6 because the New Mexico Corrections Department (NMCD) has a legal obligation to  
7 maintain accurate records and to detain inmates according to accurate  
8 documentation. [MIO 1] In the notice of proposed disposition, this Court proposed  
9 to conclude that the district court properly construed Plaintiff’s petition as a petition  
10 for writ of mandamus and that the district court did not abuse its discretion in  
11 denying the petition. [CN 3] Specifically, the proposed disposition suggested that  
12 the petition was insufficient to warrant issuance of a writ of mandamus because it  
13 failed to identify any legal authority that established NMCD had a ministerial duty  
14 to act. [CN 5] *See Brantley Farms v. Carlsbad Irr. Dist.*, 1998-NMCA-023, ¶ 22,  
15 124 N.M. 698, 954 P.2d 763 (stating that in order for mandamus to issue, the act  
16 sought to be compelled must be ministerial, and defining a ministerial duty as one  
17 that a public official is “required to perform by direction of law upon a given state  
18 of facts being shown to exist”); NMSA 1978, § 44-2-4 (1884).

19 {4} In his memorandum in opposition, Plaintiff challenges our proposed  
20 conclusion that the petition failed to establish NMCD had a ministerial duty to act

1 by directing our attention to various policies promulgated by the secretary of  
2 corrections. [MIO 1-2] However, nothing in the record indicates any of these policies  
3 were identified in Plaintiff’s petition or brought to the district court’s attention.  
4 Plaintiff has similarly failed to identify anything in the record to indicate he invoked  
5 a ruling from the district court regarding whether those NMCD policies create a  
6 ministerial duty. *See Crutchfield v. N.M. Dep’t of Tax’n and Revenue*, 2005-NMCA-  
7 022, ¶ 14, 137 N.M. 26, 106 P.3d 1273 (“[O]n appeal, the party must specifically  
8 point out where, in the record, the party invoked the court’s ruling on the issue.  
9 Absent that citation to the record or any obvious preservation, we will not consider  
10 the issue.”). We therefore conclude Plaintiff did not invoke a ruling from the district  
11 court on, or otherwise adequately preserve for review, the issue of whether any of  
12 the NMCD policies identified for the first time in Plaintiff’s memorandum in  
13 opposition created a ministerial duty. *See id.* (“To preserve error for review, a party  
14 must fairly invoke a ruling of the district court on the same grounds argued in this  
15 Court. Such preservation allows the district court an opportunity to correct error,  
16 thereby avoiding the need for appeal, at the same time creating a record from which  
17 the appellate court can make an informed decision.” (citations omitted)).  
18 Furthermore, Plaintiff has not responded to our proposed conclusion that the legal  
19 authority identified in Plaintiff’s petition—an opinion from this Court and an order  
20 from our Supreme Court—did not establish a ministerial duty. [CN 5] *See State v.*

1 *Johnson*, 1988-NMCA-029, ¶ 8, 107 N.M. 356, 758 P.2d 306 (stating that when a  
2 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 {5} Accordingly, we conclude that Plaintiff has not demonstrated that the district  
5 court abused its discretion in denying his petition for writ of mandamus. *See N.M.*  
6 *Found. for Open Gov't v. Corizon Health*, 2020-NMCA-014, ¶ 15, 460 P.3d 43  
7 (reviewing the grant or denial of a writ of mandamus under an abuse of discretion  
8 standard).

9 {6} In addition, we note that though Plaintiff has attached a document to his  
10 memorandum in opposition that, according to Plaintiff, demonstrates that he  
11 “exhaust[ed] facility and administrative remedies” [MIO 2-3], we cannot consider  
12 evidence that was not presented to the district court. *See Kepler v. Slade*, 1995-  
13 NMSC-035, ¶ 13, 119 N.M. 802, 896 P.2d 482 (“Matters outside the record present  
14 no issue for review.” (internal quotation marks and citation omitted)); *Campos*  
15 *Enters., Inc. v. Edwin K. Williams & Co.*, 1998-NMCA-131, ¶ 12, 125 N.M. 691,  
16 964 P.2d 855 (stating that this Court “reviews the case litigated below, not the case  
17 that is fleshed out for the first time on appeal.” (alteration, internal quotation marks,  
18 and citation omitted)). We also note that Plaintiff has abandoned his other assertions  
19 of error regarding furlough and serving notice on Defendant. [CN 6, 8] *See Taylor*  
20 *v. Van Winkle’s IGA Farmer’s Mkt.*, 1996-NMCA-111, ¶ 5, 122 N.M. 486, 927

1 P.2d 41 (recognizing that issues raised in a docketing statement, but not contested in  
2 a memorandum in opposition are abandoned).

3 {7} For the reasons stated in our notice of proposed disposition and herein, we  
4 affirm.

5 {8} **IT IS SO ORDERED.**

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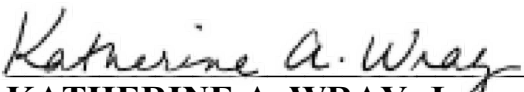
 **J. MILES HANISEE, Judge**

8 **WE CONCUR:**

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 **MEGAN P. DUFFY, Judge**

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 **KATHERINE A. WRAY, Judge**