

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

Court of Appeals of New Mexico  
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2 Opinion Number: \_\_\_\_\_

3 Filing Date: June 11, 2026



Mark Reynolds

4 **No. A-1-CA-42283**

5 **STATE OF NEW MEXICO,**

6           Plaintiff-Appellant,

7 v.

8 **DAVID HENRY BOWERSOX**

9 **a/k/a DAVID BOWERSOX,**

10           Defendant-Appellee.

11 **APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**

12 **Douglas R. Driggers, District Court Judge**

13 Raúl Torrez, Attorney General

14 Santa Fe, NM

15 Meryl Swanson, Assistant Solicitor General

16 Albuquerque, NM

17 for Appellant

18 Bennett J. Baur, Chief Public Defender

19 Santa Fe, NM

20 Luz C. Valverde, Assistant Appellate Defender

21 Albuquerque, NM

22 for Appellee

1 **OPINION**

2 **HANISEE, Judge.**

3 {1} The State appeals the district court’s dismissal without prejudice of charges  
4 against Defendant David Henry Bowersox, arguing that the district court erred by  
5 neglecting to consider required factors before sanctioning the State. Defendant  
6 argues that NMSA 1978, Section 39-3-3(B)(1) (1972), does not provide jurisdiction  
7 for dismissals without prejudice, per our Supreme Court’s recent decision in *State v.*  
8 *Skeets*, \_\_\_-NMSC-\_\_\_, \_\_\_ P.3d \_\_\_ (S-1-SC-40418 Feb. 12, 2026). Under *Skeets*,  
9 when the state is itself empowered to refile a dismissed “nascent prosecution . . . at  
10 the district court level,” *id.* ¶ 13—which we now hold to include those in which a  
11 determination of probable cause has been made by a grand jury or judge but in which  
12 an arraignment is not held within the relevant time limits—then “the district court’s  
13 order has not completely disposed of the case [and] it is not final.” *Id.* (holding same  
14 for cases in which the state has yet to obtain a determination of probable cause). We  
15 therefore agree with Defendant and affirm the district court.

16 **BACKGROUND**

17 {2} On February 8, 2024, Defendant was indicted on two counts of possession of  
18 a controlled substance. When Defendant failed to appear for his arraignment, a bench  
19 warrant was issued. Defendant was arrested on September 24, and an amended  
20 criminal summons was issued on September 26. His arraignment was then

1 rescheduled for September 30. That arraignment was vacated when the State failed  
2 to appear at the scheduled time.<sup>1</sup> The district court filed an order in which it  
3 acknowledged the State’s unsuccessful attempt to join the hearing via Google Meet  
4 but nonetheless construed the delay against the State, per the applicable local rule.  
5 *See* LR3-303(D)(2) NMRA. Defendant’s arraignment was reset for October 4, one  
6 day after the seven-day deadline set forth in the local rule. *See* LR3-303(D)(2)  
7 (“[T]he arraignment of a defendant in custody on the case to be arraigned shall be  
8 held no later than seven (7) days after the filing of the bind-over order, information,  
9 indictment, or date of arrest, whichever is later.”). On October 3, defense counsel  
10 filed a motion to dismiss based on LR3-303(D)(2), asserting that the State violated  
11 the rule by failing to arraign Defendant on or before October 3. The district court  
12 considered Defendant’s motion to dismiss during the arraignment held the next day,  
13 and it issued an order granting the motion without prejudice based on the “State’s  
14 failure to arraign [Defendant] within seven (7) days in violation of [LR]3-303.” The  
15 State appeals from the order of dismissal without prejudice.

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<sup>1</sup>The State provides reasons for its absence at the scheduled proceeding on appeal, but concedes that none of those reasons appear in the record. *See Kepler v. Slade*, 1995-NMSC-035, ¶ 13, 119 N.M. 802, 896 P.2d 482 (“Matters outside the record present no issue for review.” (internal quotation marks and citation omitted)). While the State explains it was not afforded an opportunity to make a record regarding its absence, our holding today does not turn on the State’s culpability. Accordingly, we assume without deciding that the State failed to appear on September 30, 2024, and decline to consider the reasons for this failure.

1 **DISCUSSION**

2 {3} The parties advance several arguments on appeal, but chief among them  
3 entails whether this Court has jurisdiction under the circumstance of this dismissal  
4 without prejudice. The State argues we do under Section 39-3-3(B)(1). *See id.* (“In  
5 any criminal proceeding in district court an appeal may be taken by the state to the  
6 [S]upreme [C]ourt or [C]ourt of [A]ppeals, as appellate jurisdiction may be vested  
7 by law in these [C]ourts . . . within thirty days from a decision, judgment or order  
8 dismissing a complaint, indictment or information as to any one or more counts.”).  
9 Defendant answers that the order of dismissal without prejudice is not a final order,  
10 per *Skeets*. *See* \_\_\_-NMSC-\_\_\_, ¶ 13. The State replies that *Skeets*—issued after the  
11 State filed its brief in chief—applies only to cases lacking probable cause as  
12 determined by a district court following a preliminary hearing. We agree with  
13 Defendant and explain, noting that our holding on this point obviates the remaining  
14 arguments.<sup>2</sup>

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<sup>2</sup>Those arguments from the State are that the district court was required by both the local rule and prior precedent to consider certain factors on the record in order to explain its reasoning for ordering sanctions, and that it was wrongly denied an opportunity to respond to Defendant’s motion to dismiss. As to the former, the State points to the district court’s need to have considered the factors of culpability, prejudice, and lesser sanctions. *See* LR3-303(T); *see also State v. McWhorter*, 2022-NMCA-011, ¶¶ 14, 17, 505 P.3d 865 (explaining a framework that includes considerations of culpability, prejudice, and lesser sanctions and that “provides appropriate tools for evaluating the type of sanction that the district court may impose,” based on *State v. Harper*, 2011-NMSC-044, 150 N.M. 745, 266 P.3d 25, and *State v. Le Mier*, 2017-NMSC-017, 394 P.3d 959). We agree that district courts

1 {4} We review questions of jurisdiction de novo. *See State v. Heinsen*, 2005-  
2 NMSC-035, ¶ 6, 138 N.M. 441, 121 P.3d 1040. We first summarize *Skeets* and then  
3 determine whether it controls this case. In *Skeets*, the district court dismissed a  
4 defendant’s charges after holding a preliminary hearing, finding an absence of  
5 probable cause. *See* \_\_\_-NMSC-\_\_\_, ¶ 1. The state appealed, pointing to Section 39-  
6 3-3(B)(1) for jurisdiction. \_\_\_-NMSC-\_\_\_, ¶ 2. Our Supreme Court disagreed that  
7 such granted jurisdiction for orders of dismissal without prejudice where “the [s]tate  
8 has numerous available options to restart the nascent prosecution.” *Id.* ¶ 13. The  
9 Court reasoned that a finding of no probable cause at a preliminary hearing does not  
10 permanently end the prosecution since the state still has other immediate options to  
11 pursue the charges under Rule 5-201 NMRA, such as refileing the charges by  
12 complaint, as a new criminal information, or seeking a grand jury indictment. *Skeets*,  
13 \_\_\_-NMSC-\_\_\_, ¶ 13. Because orders are only final when they “resolve[] all of the  
14 factual and legal issues before the court and completely dispose[] of the case,”  
15 *Heinsen*, 2005-NMSC-035, ¶ 14, which our Supreme Court held not to be the case

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remain obligated to consider the aforementioned factors in keeping with *McWhorter*,  
*Harper*, and *Le Mier* in the process of determining sanctions when a right to appeal  
exists, such as for sanctions excluding witnesses or evidence, or for the extreme  
sanction of dismissal with prejudice. As to the latter, the State points to Rule 5-  
120(E) NMRA and jurisprudence governing the opportunity to respond to motions  
prior to their being ruled upon. However, without a right of appeal this argument  
evades present review. *See Skeets*, \_\_\_-NMSC-\_\_\_, ¶ 13.

1 in *Skeets* given the tools available to the state to revive its prosecution, the order of  
2 dismissal was not final. *See Skeets*, \_\_\_-NMSC-\_\_\_, ¶ 13.

3 {5} The Court also rejected the state’s argument that the order was practically  
4 final, because the doctrine of practical finality only applies when a given issue  
5 otherwise would entirely escape review. *Id.* ¶¶ 14-21. In arguing *Skeets* to be  
6 “narrowly applicable to dismissals for lack of probable cause at the *outset* of a case,”  
7 and emphasizing our Supreme Court’s use of the word “nascent” to focus attention  
8 on the absence of a prior probable cause determination in *Skeets*, unlike in this case,  
9 the State misses the point of *Skeets*: that is, that the “better path is the one which  
10 serves the timely administration of justice.” *See id.* ¶ 18. By this expression, we view  
11 our Supreme Court to emphasize an overarching goal of advancing criminal cases to  
12 the benefit of the state, the defendant, and the public. And that, as well as the need  
13 to facilitate judicial economy as possible in a given case, is all the more present  
14 herein, because unlike in *Skeets*—where probable cause had yet to be determined—  
15 the State here could simply refile the case as a criminal information supported by  
16 probable cause as previously determined. *See* LR3-303(Q) (“If a probable cause  
17 determination has been made by preliminary hearing or grand jury and the court  
18 dismisses the case without prejudice, the same charges may be refiled under the same  
19 case number by information within six (6) months of the dismissal without requiring  
20 a new probable cause determination.”). As such here, immediate appellate review

1 was not only unnecessary but an all the more needless consumption of time and  
2 resources. *See Skeets*, \_\_\_-NMSC-\_\_\_, ¶ 18. While we agree with the State that a  
3 preliminary hearing in the absence of probable cause is a particularly nascent<sup>3</sup>  
4 prosecution, we are hard pressed to determine an indicted defendant yet to be  
5 arraigned is a markedly more advanced criminal case, particularly given the  
6 dismissal without prejudice determined to be nonfinal in *Skeets* is centrally rooted  
7 in the timely administration of justice.

8 {6} More specifically in this regard, our Supreme Court pointed to the charges in  
9 *Skeets* as having aged nearly three years once the appeal was completed, whereas  
10 refiling the charges could have led to a new probable cause hearing within days. \_\_\_-  
11 NMSC-\_\_\_, ¶ 18. Similarly, here, it is presently well over two years since Defendant  
12 allegedly committed the charged acts. Permitting appeal of a district court ruling that  
13 could effectively otherwise be nullified by the State itself is here, as in *Skeets*, “a  
14 disservice to the interests of justice” for both the State and Defendant. *See id.* And  
15 again here, “[t]he State offers no compelling reason why the appellate path is  
16 preferable to a readily available, more efficient, alternative path for a probable cause  
17 determination[,]” particularly given the probable cause determination—having

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<sup>3</sup>“Nascent” is defined as follows: “Coming or having recently come into existence.” *Merriam-Webster, Nascent*, <https://www.merriam-webster.com/dictionary/nascent> (last visited June 3, 2026). We view this term, chosen by our Supreme Court, to apply as well to cases in which probable cause determinations are recently made.

1 already here have been made by a grand jury—is not erased by the dismissal for six  
2 months. *See id.* Like our Supreme Court in *Skeets*, we are loath to permit such a  
3 “significant delay in the administration of justice.” *See id.* We conclude the inability  
4 to appeal in such a circumstance therefore does not prejudice the State, since charges  
5 can be refiled and the case begun anew in this circumstance mere hours after an order  
6 of dismissal without prejudice is issued.

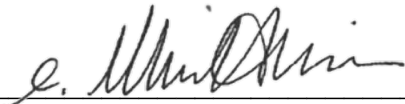
7 {7} Despite the difference in charging forums—a preliminary hearing seeking to  
8 establish probable cause in district court versus a routine district court proceeding  
9 following a grand jury’s determination of probable case—the circumstances in  
10 *Skeets* are not so meaningfully distinct from the circumstances in this case to  
11 preclude our application of the *Skeets* holding, particularly given the availability of  
12 LR3-303(Q) to the State to immediately commence anew by process of filing a  
13 criminal information. We therefore hold that the State does not have a right to appeal  
14 under Section 39-3-3(B)(1) for orders of dismissal without prejudice for failure to  
15 arraign a defendant within the relevant time limits, since such orders do not  
16 completely dispose of a case. We conclude that the order of the district court  
17 appealed to us by the State is neither final nor practically final, and therefore Section  
18 39-3-3(B)(1) does not provide us with jurisdiction to decide the merits of the appeal.

19 **CONCLUSION**

20 {8} Determining there to be no jurisdiction for appeal, we affirm.

1 {9} IT IS SO ORDERED.

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J. MILES HANISEE, Judge

4 WE CONCUR:

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6 \_\_\_\_\_  
JACQUELINE R. MEDINA, Chief Judge

7   
8 \_\_\_\_\_  
KRISTOPHER N. HOUGHTON, Judge