

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
Filed 7/23/2026 9:28 AM

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

No. A-1-CA-41918

IVAN OLVERA,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY

Douglas R. Driggers, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Kellie J. Garcia, Assistant Solicitor General

Albuquerque, NM

for Appellant

Bennett J. Baur, Chief Public Defender

Mallory E. Harwood, Associate Appellate Defender

Santa Fe, NM

for Appellee

MEMORANDUM OPINION

WRAY, Judge.

{1} The State appeals the district court's sanction for an untimely arraignment.

Defendant, Ivan Olvera, was indicted by a grand jury, but when no arraignment

occurred within the required fifteen days after the indictment, the district court sua

1 sponte dismissed the case without prejudice. *See* LR3-303(D)(2) NMRA (2023).¹
2 On appeal, the State argues that the district court did not conduct the necessary
3 sanction procedures and did not consider the factors required by the local rules and
4 our Supreme Court. *See* LR3-303(S) (addressing the requirements to impose
5 sanctions); *State v. Harper*, 2011-NMSC-044, ¶¶ 16-20, 150 N.M. 745, 266 P.3d 25;
6 *State v. Le Mier*, 2017-NMSC-017, ¶ 15, 394 P.3d 959. Defendant challenges the
7 State’s right to appeal and our jurisdiction to review. *See El Castillo Ret. Residences*
8 *v. Martinez*, 2017-NMSC-026, ¶ 20, 401 P.3d 751 (“A jurisdictional defect may not
9 be waived and may be raised at any stage of the proceedings, even sua sponte by the
10 appellate court.” (internal quotation marks and citation omitted)). As we explain, we
11 hold that the State does not have the right to appeal under the circumstances, we
12 have no jurisdiction, and we therefore dismiss the appeal.

13 **DISCUSSION**

14 {2} Because this is a memorandum opinion and the parties are familiar with the
15 relevant facts, we turn directly to our analysis. The State argues that the right to
16 appeal is provided by statute and our New Mexico Constitution. *See State v. Heinsen*,
17 2005-NMSC-035, ¶ 7, 138 N.M. 441, 121 P.3d 1040 (“The [s]tate’s right to appeal
18 an adverse ruling in a criminal proceeding exists only by constitutional provision,

¹The 2023 version of LR3-303 was in effect at the time of the relevant proceedings, and we refer to that version of the rule throughout this opinion.

statute, or rule.”). We consider the “jurisdictional issues and the legal issues raised in this appeal under a de novo standard of review.” *Id.* ¶ 6. We begin with the State’s statutory argument, then address the constitutional argument.

I. Statutory Right to Appeal

{3} The State contends that it has a right to appeal the district court’s dismissal without prejudice under the plain language of NMSA 1978, Section 39-3-3(B)(1) (1972), which affords the State a right to an appeal “from a decision, judgment or order dismissing a complaint, indictment or information.” This Court, however, based on our Supreme Court’s holding in *State v. Skeets*, ___-NMSC-___, ___ P.3d ___ (S-1-SC-40418, Feb. 12, 2026), has held to the contrary. *See State v. Bowersox*, ___-NMCA-___, ___ P.3d ___ (A-1-CA-42283, June 11, 2026), *cert. pending* (S-1-SC-41516, July 13, 2026). *Bowersox* also addressed the state’s appeal of a dismissal without prejudice after an untimely arraignment. *Id.* ¶¶ 2-3. This Court held as follows:

Under *Skeets*, when the state is itself empowered to refile a dismissed nascent prosecution at the district court level—which we now hold to include those in which a determination of probable cause has been made by a grand jury or judge but in which an arraignment is not held within the relevant time limits—then the district court’s order has not completely disposed of the case and it is not final.

Id. ¶ 1 (text only) (citation omitted). This Court’s holding in *Bowersox* rejects all of the State’s arguments in this case to support a statutory right to appeal under these

1 circumstances, and “therefore Section 39-3-3(B)(1) does not provide us with
2 jurisdiction to decide the merits of the appeal.” *See Bowersox*, ___-NMCA-___, ¶ 7.

3 **II. Constitutional Right to Appeal**

4 {4} The State argues that even if “an appeal under Section 39-3-3” is precluded,
5 the State still “has a constitutional right to appeal,” under Article VI, Section 2 of
6 the New Mexico Constitution, which dictates that “an aggrieved party shall have an
7 absolute right to one appeal.” This provides the State a right to appeal regardless of
8 whether there is a final order. *See Heinsen*, 2005-NMSC-035, ¶ 8 (noting that an
9 exception to the final judgment rule “might arise” under the constitution). But this
10 exception only permits the State to appeal when “a ruling . . . is contrary to law” and
11 “when the ruling affects a particularly important state interest.” *Id.* ¶ 9. As we
12 explain, we are not persuaded that this appeal meets these criteria.

13 {5} The State argues the sanction of dismissal without prejudice was contrary to
14 law² because the district court did not consider the required factors or reduce
15 findings about those factors to writing. *See Le Mier*, 2017-NMSC-017, ¶¶ 15-16
16 (identifying mandatory findings); *see also State v. McWhorter*, 2022-NMCA-011,

²The State also argues that the district court “prematurely determined that the State violated LR3-303(S)(6),” because the district court issued the dismissal order during the morning of the final day to meet the deadline. *See* Rule 5-104(A)(5) NMRA (dictating the “Last Day” for electronic filing to be at “midnight”). But even if the district court prematurely filed the dismissal order, no arraignment was scheduled that final day and therefore the arraignment deadline would have expired regardless.

¶¶ 16-20, 505 P.3d 865 (requiring district courts to consider on the record both the factors from the local rule and the *Harper* framework to evaluate sanctions); LR3-303(S). We need not determine whether the district court sufficiently demonstrated on the record that all of the factors were considered, because the State does not demonstrate that any error by the district court affected a “particularly important state interest.” *See Heinsen*, 2005-NMSC-035, ¶ 9; *see also State v. Aguilar*, 1981-NMSC-027, ¶¶ 5-7, 95 N.M. 578, 624 P.2d 520 (observing that “the [s]tate does not have an absolute right to appeal in every situation in which it may feel ‘aggrieved’ by a [district] court’s ruling” and emphasizing that the decision to permit an appeal in that case was “founded upon the [s]tate’s strong interest in the enforcement of its statutes”).

{6} Even if the district court did not make certain mandatory findings, the absence of those findings to support the sanction of dismissal without prejudice to remedy an undisputed rule violation does not “affect[] a particularly important state interest.” *See Heinsen*, 2005-NMSC-035, ¶ 9. The State does not explain why the absence of mandatory findings affects a particularly important interest of the state as a party to a criminal action, as opposed to a mandatory requirement that primarily assists appellate review. *See State v. Lewis*, 2018-NMCA-019, ¶¶ 12-16, 413 P.3d 484 (stressing the importance of the mandatory findings to create “an adequately developed record that an appellate court can substantively review” because the

findings are fact-specific and depend on the circumstances); *State v. Guzman*, 2026-NMCA-043, ¶ 15, 586 P.3d 337 (noting that the mandatory findings are required “to permit appellate courts to evaluate (1) whether the district court applied the required *Harper/Le Mier* considerations; and (2) the district court’s reasoning”).

{7} Instead, the State argues that there is “a strong and compelling interest in ensuring that longtime district court judges are not perpetually flouting mandatory rules and requirements before dismissing cases on purely technical grounds.” The State’s argument suggests that the district court has a pattern of making insufficient findings before imposing sanctions for rule violations but offers no support for such a suggestion. Our Supreme Court has generally “expressly authorize[d] our courts to utilize [sanctions] to proactively manage their dockets, achieve efficiency, and ensure that judicial resources—which are greatly limited—are not wasted.” *Le Mier*, 2017-NMSC-017, ¶ 19. The argument further minimizes (1) the importance of the panoply of “technical requirements” that our Supreme Court has adopted in the local rule, *see* LR3-303(D)(2) (imposing the fifteen-day requirement for arraignment); *see also* Rule 5-101(B) NMRA (explaining that the rules of criminal procedure “are intended to provide for the just determination of criminal proceedings” and “[t]hey shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay”); and (2) the limited effect of a dismissal without prejudice on the state’s ability to prosecute crimes and protect the

1 public, *State v. Lopez*, 2023-NMSC-011, ¶ 11, 529 P.3d 893 (defining “dismissal
2 without prejudice as a dismissal that does not bar” either party or the court “from
3 refiling the lawsuit within the limitations period” (internal quotation marks and
4 citation omitted)). Although as the State points out, the local rule contemplates
5 progressively severe sanctions after a first dismissal without prejudice, *see* LR3-
6 303(S)(2), a purpose of progressive sanctions is to deter future rule deviations, *see*
7 *Lopez*, 2023-NMSC-011, ¶ 18. The possibility that the State may be exposed to a
8 heightened sanction for potential future rule violations is merely speculative and
9 does not generate sufficient prejudice to justify appellate review of this lesser
10 sanction imposed in a nonfinal order.

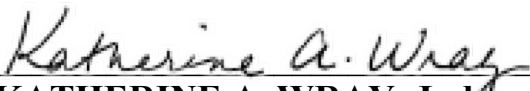
11 {8} For these reasons, we decline to hold that an absence of findings in the present
12 case establishes the State’s right to appeal the nonfinal dismissal order without
13 prejudice. The district court did not decline to enforce any statute or prevent the
14 performance of a duty required by law. *See Aguilar*, 1981-NMSC-027, ¶ 7
15 (permitting appeal based on the state’s “strong interest in the enforcement of its
16 statutes”); *State v. Armijo*, 1994-NMCA-136, ¶¶ 7-8, 118 N.M. 802, 887 P.2d 1269
17 (permitting appeal of the district court’s disqualification of the attorney general),
18 *abrogated on other grounds by Skeets*, ____-NMSC-____, ¶ 15. We discern little
19 prejudice to the State from requiring the case to be refiled and “[a]t most, the State’s
20 interest in this case is to have [district] courts make correct decisions on the law

1 based on the right rationales.” *See In re Larry K.*, 1999-NMCA-078, ¶ 15, 127 N.M.
2 461, 982 P.2d 1060 (seeing “no great prejudice” that would permit the state to invoke
3 this Court’s appellate jurisdiction absent a final order). As this Court has observed,
4 “[w]hile that interest is undoubtedly important, it is nonetheless subject to the
5 constraints of proper procedure.” *Id.* Because “the State’s interest in this case is not
6 compelling enough to justify an exception to the final judgment rule,” we are without
7 jurisdiction to address the merits of the State’s appeal. *See id.*

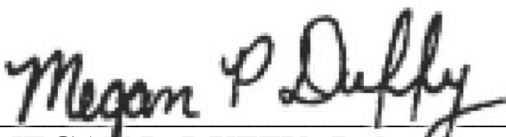
8 **CONCLUSION**

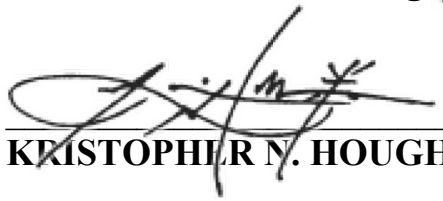
9 {9} Because we lack jurisdiction, we dismiss the appeal.

10 {10} **IT IS SO ORDERED.**

11 
12 **KATHERINE A. WRAY, Judge**

13 **WE CONCUR:**

14 
15 **MEGAN P. DUFFY, Judge**

16 
17 **KRISTOPHER N. HOUGHTON, Judge**