

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
Filed 7/8/2026 7:33 AM

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

No. A-1-CA-42973

JESSE MORALES,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY

Lisa B. Riley, District Court Judge

Raúl Torrez, Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Santa Fe, NM
Steven J. Forsberg, Assistant Public Defender
Albuquerque, NM

for Appellant

MEMORANDUM OPINION

HENDERSON, Judge.

{1} Defendant Jesse Morales appeals following the revocation of his probation.
[RP 187-191, 193] We entered a calendar notice, proposing to affirm. Defendant
filed a memorandum in opposition, which we have duly considered. Unpersuaded,
we affirm.

1 {2} In his docketing statement, Defendant contended that the district court erred
2 when the time requirements of Rule 5-805 NMRA were exceeded and it denied his
3 motion to dismiss filed pursuant to Rule 5-805(L). [DS PDF 3] However, Defendant
4 relied on case law construing an older version of the rule. [DS PDF 4-5] Our calendar
5 notice proposed to affirm because the current version of Rule 5-805 no longer
6 contemplates mandatory dismissal with prejudice when the time lines in Rule 5-805
7 are exceeded, and because Defendant did not cite any authority that would indicate
8 an abuse of discretion occurred based on the current version of Rule 5-805. [CN 3]
9 In his memorandum in opposition, Defendant maintains the same argument as
10 presented in his docketing statement and does not address our proposed conclusions
11 in the calendar notice. [MIO 30-32] *See State v. Mondragon*, 1988-NMCA-027,
12 ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that “[a] party responding to a summary
13 calendar notice must come forward and specifically point out errors of law and fact,”
14 and the repetition of earlier arguments does not fulfill this requirement), *superseded*
15 *by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297
16 P.3d 374. Additionally, Defendant acknowledges that his assertion of error
17 concerning incarceration credit is more appropriately addressed in a habeas corpus
18 proceeding. *See State v. Bernal*, 2006-NMSC-050, ¶ 33, 140 N.M. 644, 146 P.3d
19 289 (stating that when the record on appeal does not provide enough information to
20 adequately determine whether an action was error or caused prejudice, “this Court

1 has a general preference that such claims be brought and resolved through habeas
2 corpus proceedings”). We therefore remain unpersuaded that Defendant has
3 demonstrated that the calendar notice was in error.

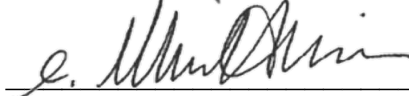
4 {3} Accordingly, and for the reasons stated in our notice of proposed disposition,
5 we affirm.

6 {4} **IT IS SO ORDERED.**

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SHAMMARA H. HENDERSON, Judge

9 **WE CONCUR:**

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J. MILES HANISEE, Judge

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GERALD E. BACA, Judge