

ARELLANO V. VELARDE

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ALICE ARELLANO,
Petitioner-Appellee,
v.
TOBY ARSENIO VELARDE,
Respondent-Appellant.

NO. 29,786

COURT OF APPEALS OF NEW MEXICO

February 12, 2010

APPEAL FROM THE DISTRICT COURT OF TAOS COUNTY, Sam B. Sanchez, District
Judge

COUNSEL

New Mexico Legal Aid, Inc., Maija West, Taos, NM, for Appellee

William A. Esperance, Albuquerque, NM, for Appellant

JUDGES

MICHAEL D. BUSTAMANTE, Judge. WE CONCUR: CYNTHIA A. FRY, Chief Judge,
JONATHAN B. SUTIN, Judge

AUTHOR: MICHAEL D. BUSTAMANTE

MEMORANDUM OPINION

BUSTAMANTE, Judge.

Defendant appeals a finding that he violated the terms of an order of protection and ordering him jailed for ninety days. In our notice, we proposed to affirm the district court order. Plaintiff has responded with support for our proposal. Defendant has responded

by filing an amended docketing statement and a motion to dismiss the appeal as moot. We affirm.

Rule 12-210(D) NMRA, states that after the notice of proposed summary disposition is served, counsel may “file a memorandum setting forth reasons why the proposed disposition should or should not be made and why the case should or should not be assigned to the summary calendar.” However, the party is limited to arguing issues raised in the docketing statement. The docketing statement may be amended for good cause shown with the permission of this Court. Rule 12-210 (D)(3). Defendant filed no memorandum in response to the summary calendar notice. Under such circumstances, we issue an opinion consistent with the reasoning in the calendar notice. *See Frick v. Veazey*, 116 N.M. 246, 247, 861 P.2d 287, 288 (Ct. App. 1993) (stating that failure to file memorandum in opposition constitutes acceptance of the disposition proposed).

We cannot construe Defendant’s amended docketing statement as a response to the calendar notice, even though our notice pointed out that the first docketing statement was lacking in citation to the facts of the case. The amended docketing statement does not address the proposals in the calendar notice. Further, Defendant has filed no motion to amend the docketing statement as required by *State v. Rael*, 100 N.M. 193, 197, 668 P.2d 309, 313 (Ct. App. 1983). Therefore, we decline to consider the amended docketing statement.

Finally, Defendant has filed a motion to dismiss his appeal as moot as he contends that he has served the sentence of the court. Dismissal upon motion of the appellant, without concurrence by appellee, is completely discretionary with this Court. Rule 12-401(B) NMRA. Under the circumstances of this case, we decline to dismiss the appeal. Simply because Defendant has served his sentence does not mean that the appeal is moot. *See State v. Jose S.*, 2005-NMCA-094, ¶ 7, 138 N.M. 44, 116 P.3d 115 (addressing issues even though sentence had been served).

Therefore, for the reasons stated in the calendar notice, we affirm.

IT IS SO ORDERED.

MICHAEL D. BUSTAMANTE, Judge

WE CONCUR:

CYNTHIA A. FRY, Chief Judge

JONATHAN B. SUTIN, Judge