

MORALES V. SANCHEZ

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JESUS A. MORALES,
Plaintiff-Appellant,
v.
**DAVID SANCHEZ, DEPARTMENT
OF CORRECTIONS AND ALL
WARDENS,**
Defendants-Appellees.

NO. 29,802

COURT OF APPEALS OF NEW MEXICO

October 14, 2010

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY, Don Maddox, District
Judge

COUNSEL

Jesus A. Morales, Clayton, NM, Pro Se Appellant

Yenson Lynn Allen & Wosick PC, Patricia A. Padrino, Albuquerque, NM, for Appellees

JUDGES

CELIA FOY CASTILLO, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge,
MICHAEL E. VIGIL, Judge

AUTHOR: CELIA FOY CASTILLO

MEMORANDUM OPINION

CASTILLO, Judge.

Plaintiff Jesus A. Morales appeals the district court's grant of Defendants' motion for summary judgment. On July 12, 2010, this Court filed a notice of proposed summary

disposition proposing to dismiss the appeal due to Plaintiff's failure to timely file a notice of appeal in district court. Plaintiff filed a memorandum in opposition to summary disposition, which we have duly considered. We dismiss Plaintiff's appeal.

On August 20, 2009, the district court filed its written order granting summary judgment for Defendants. [RP 187] Neither the record proper nor the Court of Appeals file indicates that a notice of appeal was filed in district court, as required by Rule 12-202(A) NMRA.

Appellate requirements for time and place of filing should be termed "mandatory" rather than "jurisdictional," and an appellate court has discretion to hear an appeal if a party has failed to comply with such mandatory preconditions. See *Govich v. N. Am. Sys., Inc.*, 112 N.M. 226, 230, 814 P.2d 94, 98 (1991). However, "[o]nly the most unusual circumstances beyond the control of the parties—such as error on the part of the court—will warrant overlooking procedural defects." *Trujillo v. Serrano*, 117 N.M. 273, 278, 871 P.2d 369, 374 (1994).

In his memorandum in opposition, Plaintiff states that he did not know he was supposed to file a notice of appeal in district court and discusses the difficulties incarcerated persons may experience in pursuing legal matters. He does not persuade us, however, that his circumstances warrant overlooking his failure to file a timely notice of appeal in district court.

For the reasons stated above, we dismiss Plaintiff's appeal.

IT IS SO ORDERED.

CELIA FOY CASTILLO, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

MICHAEL E. VIGIL, Judge