

STATE V. ALVAREZ

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**STATE OF NEW MEXICO, Plaintiff-Appellee,
v.
LUPE FLORES ALVAREZ, Defendant-Appellant.**

Docket No. 29,314

COURT OF APPEALS OF NEW MEXICO

August 3, 2009

APPEAL FROM THE DISTRICT COURT OF HIDALGO COUNTY, J. C. Robinson,
District Judge.

COUNSEL

Gary K. King, Attorney General, Santa Fe, NM, for Appellee.

Hugh W. Dangler, Chief Public Defender, Carlos Ruiz de la Torre, Assistant Appellate Defender, Santa Fe, NM, for Appellant.

JUDGES

RODERICK T. KENNEDY, Judge. WE CONCUR: ROBERT E. ROBLES, Judge, LINDA M. VANZI, Judge

AUTHOR: RODERICK T. KENNEDY

MEMORANDUM OPINION

KENNEDY, Judge.

Defendant is appealing from a district court judgment and sentence entered after he plead no contest to criminal damage to property. We issued a calendar notice proposing to affirm, and Defendant has responded with a memorandum in opposition. We affirm.

Defendant continues to argue that he did not adequately understand the plea and disposition agreement, and he should be permitted to withdraw. A defendant must properly preserve a claim of an unknowing or involuntary plea by filing a motion to withdraw the plea, then must demonstrate a manifest injustice to the trial court. See *State v. Dominguez*, 2007-NMCA-132, ¶ 14, 142 N.M. 631, 168 P.3d 761; *State v. Martinez*, 2002-NMSC-008, ¶ 44, 132 N.M. 32, 43 P.3d 1042.

Here, neither the record nor Defendant's docketing statement indicate that this matter was preserved below. In addition, Defendant has not referred us to anything in the record to support the manifest injustice showing. Instead, Defendant's claims [MIO 1-2] appear to be matters outside of the record. See *State v. Martin*, 101 N.M. 595, 603, 686 P.2d 937, 945 (1984) (holding that an appellate court may not consider matters not of record). As such, to the extent that Defendant believes these claims have merit, it would need to be addressed in a habeas proceeding. See *Duncan v. Kerby*, 115 N.M. 344, 346, 851 P.2d 466, 468 (1993).

For the reasons set forth above, we affirm.

IT IS SO ORDERED.

RODERICK T. KENNEDY, Judge

WE CONCUR:

ROBERT E. ROBLES, Judge

LINDA M. VANZI, Judge