

STATE V. BARRIOS

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JOSEPH BARRIOS,
Defendant-Appellant.**

NO. 34,477

COURT OF APPEALS OF NEW MEXICO

July 28, 2015

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Brett R.
Loveless, District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, for Appellee

Jorge A. Alvarado, Chief Public Defender, Santa Fe, NM, Steven J. Forsberg, Assistant Appellate Defender, Albuquerque, NM, for Appellant

JUDGES

TIMOTHY L. GARCIA, Judge. WE CONCUR: MICHAEL E. VIGIL, Chief Judge, M.
MONICA ZAMORA, Judge

AUTHOR: TIMOTHY L. GARCIA

MEMORANDUM OPINION

GARCIA, Judge.

{1} Defendant appeals from the district court's judgment affirming his bench trial convictions for aggravated DWI, failure to maintain lane, and failure to use turn signal following an on-record appeal from his metropolitan court conviction. [RP 71, 98, 107]

Our notice proposed to affirm, and Defendant filed a memorandum in opposition (MIO). We remain unpersuaded by Defendant's arguments and therefore affirm.

{2} In his MIO, Defendant continues to assert that reversal is merited. [MIO 1] Defendant does not contest our recitation of facts [MIO 1] or otherwise specifically challenge our application of the law. See *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 ("A party responding to a summary calendar notice must come forward and specifically point out errors of law and fact."), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. For the reasons extensively detailed in our notice, we hold that the district court did not err in denying his requested continuance and that Defendant failed to establish a prima facie case of ineffective assistance of counsel.

{3} Lastly, as we pointed out in our notice, Defendant's ineffective assistance of counsel argument would be more appropriately addressed in habeas proceedings. [CN 7] See generally *State v. Roybal*, 2002-NMSC-027, ¶ 19, 132 N.M. 657, 54 P.3d 61 (stating that, if facts necessary to a full determination are not part of the record, an ineffective assistance claim is more appropriately brought through a habeas corpus petition).

{4} To conclude, we affirm Defendant's convictions.

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

TIMOTHY L. GARCIA, Judge

WE CONCUR:

MICHAEL E. VIGIL, Chief Judge

M. MONICA ZAMORA, Judge