

STATE V. BOX

This memorandum opinion was not selected for publication in the New Mexico Appellate Reports. Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions. Please also note that this electronic memorandum opinion may contain computer-generated errors or other deviations from the official paper version filed by the Court of Appeals and does not include the filing date.

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JOHN BOX,
Defendant-Appellant.

No. 33,845

COURT OF APPEALS OF NEW MEXICO

June 23, 2015

APPEAL FROM THE DISTRICT COURT OF LINCOLN COUNTY, James Waylon
Counts, District Judge

COUNSEL

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

J. Robert Beauvais, P.A., J. Robert Beauvais, Ruidoso, NM, for Appellant

JUDGES

JAMES J. WECHSLER, Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge,
TIMOTHY L. GARCIA, Judge

AUTHOR: JAMES J. WECHSLER

MEMORANDUM OPINION

WECHSLER, Judge.

{1} Defendant John Box filed a docketing statement, appealing his convictions for driving while under the influence (fifth offense), contrary to NMSA 1978, Section 66-8-102(A), (H) (2010) and failure to give immediate notice of accident, contrary to NMSA 1978, Section 66-7-206 (1991). [DS 1, 3; RP 21, 33, 46, 107] This Court issued a

calendar notice, proposing to summarily affirm the convictions. Defendant has filed no memorandum in opposition to our notice of proposed disposition.

{2} We note that, in June 2014, Defendant filed a motion for appointment of appellate counsel. [RP 120] The State did not concur because there was no showing of indigency. [RP 120] A hearing was held that same month, and the district court *temporarily* appointed the appellate public defender for the purposes of filling out an indigent form because the court found that there was insufficient cause to find Defendant indigent. [RP 137] Although that order was entered nearly a year ago, it does not appear from the record, the docket, or the No. 1 file that the appellate public defender was ever appointed to represent Defendant in his appeal. Accordingly, it appears that Mr. Beauvais is still counsel for Defendant. Thus, as Defendant, represented by private counsel, received our notice of proposed disposition but failed to file a memorandum in response to our notice of proposed disposition, for the reasons stated in our notice of proposed disposition, we affirm Defendant's convictions.

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

JAMES J. WECHSLER, Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Judge

TIMOTHY L. GARCIA, Judge