

STATE V. BORUNDA

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
DANA BORUNDA,
Defendant-Appellant.

NO. 31,402

COURT OF APPEALS OF NEW MEXICO

December 21, 2011

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Stan Whitaker,
District Judge

COUNSEL

Gary K. King, Attorney General, Santa Fe, NM, M. Victoria Wilson, Assistant Attorney General, Albuquerque, NM, for Appellee

Jacqueline L. Cooper, Acting Chief Public Defender, Santa Fe, NM, for Appellant

JUDGES

JAMES J. WECHSLER, Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge,
LINDA M. VANZI, Judge

AUTHOR: JAMES J. WECHSLER

MEMORANDUM OPINION

WECHSLER, Judge.

Defendant appeals her sentence upon a guilty plea, where the district court determined that the crimes were serious violent offenses for purposes of the Earned Meritorious Deduction Act (EMDA). In our notice, we proposed to reverse as it appeared that the

district court had not articulated its reasoning for determining that Defendant was a serious violent offender. The State responded that the district court had articulated its reasons. [MIO 2] This Court ordered a transcript of the sentencing presentment hearing in order to confirm this assertion. Our review of the transcript makes clear that the district court did not articulate its reasons for determining that the offenses here were serious violent offenses. The district court states only that its intention was to classify the crimes as serious violent offenses. [TR 6] It did not, however, explain the reasons for making such a determination.

Our case law is clear that the district court must make factual findings that support its determination and that those factual findings must be supported by substantial evidence. *State v. Scurry*, 2007-NMCA-064, ¶ 4, 141 N.M. 591, 159 P.3d 1034. The district court failed to do so here.

Therefore, for the reasons stated herein and in the calendar notice, we reverse and remand to the district court for resentencing; either to enter factual findings that will support its conclusion that the crimes were serious violent offenses or to remove that designation.

IT IS SO ORDERED.

JAMES J. WECHSLER, Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Judge

LINDA M. VANZI, Judge