

**STATE V. BURNETTE**

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 Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions.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.  
JOHNIE BURNETTE,  
Defendant-Appellant.**

NO. 35,739

COURT OF APPEALS OF NEW MEXICO

February 22, 2017

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY, Marci Beyer,  
District Judge

**COUNSEL**

Hector H. Balderas, Attorney General, Santa Fe, NM, Jane A. Bernstein, Assistant Attorney General, Albuquerque, NM, for Appellee

Bennett J. Baur, Chief Public Defender, Will O'Connell, Assistant Appellate Defender, Santa Fe, NM, for Appellant

**JUDGES**

LINDA M. VANZI, Chief Judge. WE CONCUR: JONATHAN B. SUTIN, Judge, M. MONICA ZAMORA, Judge

**AUTHOR:** LINDA M. VANZI

**MEMORANDUM OPINION**

**VANZI, Chief Judge.**

{1} Following a guilty plea to aggravated driving while under the influence of intoxicating liquor or drugs (DWI), contrary to NMSA 1978, § 66-8-102(D)(1) (2016), and

driving the wrong way (one-way roadway), contrary to NMSA 1978, § 66-7-316 (2003), [DS 2; RP 56] Defendant appealed from the judgment and sentence, arguing that one of the prior DWIs used for enhancement to a fourth DWI was invalid because the State did not establish that he was represented by counsel. We issued a first notice of proposed summary disposition proposing to affirm. In response, Defendant filed a memorandum in opposition. Upon consideration of Defendant's arguments, we issued a second notice of proposed summary disposition proposing to reverse. The State has filed a timely response indicating that it will not be filing a memorandum in opposition. Accordingly, for the reasons set forth in our second notice of proposed summary disposition, we reverse.

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

**LINDA M. VANZI, Chief Judge**

**WE CONCUR:**

**JONATHAN B. SUTIN, Judge**

**M. MONICA ZAMORA, Judge**