

<b>STATE V. CAPPS</b>
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**STATE OF NEW MEXICO,**  
Plaintiff-Appellee,  
v.  
**JERRY CAPPS,**  
Defendant-Appellant.

No. 35,350

COURT OF APPEALS OF NEW MEXICO

April 11, 2017

APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY, Lisa B. Riley, District  
Judge

**COUNSEL**

Hector H. Balderas, Attorney General, Santa Fe, NM, Laurie Blevins, Assistant Attorney  
General, Albuquerque, NM, for Appellee

L. Helen Bennett, P.C., L. Helen Bennett, Albuquerque, NM, for Appellant

**JUDGES**

MICHAEL E. VIGIL, Judge. WE CONCUR: JAMES J. WECHSLER, Judge, STEPHEN  
G. FRENCH, Judge

**AUTHOR:** MICHAEL E. VIGIL

**MEMORANDUM OPINION**

**VIGIL, Judge.**

{1} Defendant appeals his judgment and sentence following conviction of two counts of possession of a controlled substance, challenging the district court's calculation of credit for presentence confinement. This Court's second notice of proposed summary

disposition proposed to hold that Defendant was entitled to presentence confinement credit for seventy days that were omitted from the calculation below. [2CN 3] In response, the State has filed a notice that it concurs in that proposed disposition. We, therefore, reverse the sentence entered below and remand this case to the district court for the purpose of recalculating Defendant's presentence confinement and entering a new sentence, in accordance with NMSA 1978, Section 31-20-12 (1977).

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

**MICHAEL E. VIGIL, Judge**

**WE CONCUR:**

**JAMES J. WECHSLER, Judge**

**STEPHEN G. FRENCH, Judge**