

STATE V. DIENNO

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JOSEPH ADRIAN DIENNO
Defendant-Appellant.

No. 31,959

COURT OF APPEALS OF NEW MEXICO

July 3, 2012

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY, Lisa C. Schultz,
District Judge

COUNSEL

Gary K. King, Attorney General, Santa Fe, NM, for Appellee

Jacqueline L. Cooper, Chief Public Defender, Santa Fe, NM, Sergio J. Viscoli, Assistant Appellate Defender, Albuquerque, NM, for Appellant

JUDGES

MICHAEL E. VIGIL, Judge. WE CONCUR: CELIA FOY CASTILLO, Chief Judge, LINDA M. VANZI, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Judge.

Defendant appeals his sentence upon a probation violation. In our notice, we proposed to affirm the sentence. Defendant has timely responded. We have considered his arguments and not being persuaded, we affirm.

In our notice, we pointed out that the sentence Defendant was given was within the sentencing authority granted to the district court by the Legislature. A district court does not abuse its discretion in sentencing if the sentence is within that authorized by the Legislature. *State v. Vasquez*, 2010-NMCA-041, ¶ 41, 148 N.M. 202, 232 P.3d 438. Defendant does not argue that the sentence given was outside the district court's sentencing authority. Rather, he argues that the district court should have given him the option to complete an in-patient treatment program. While that may have been an option for the district court to consider, its failure to allow Defendant such an option is not an abuse of discretion.

Defendant also argues that he did not understand the full impact of his original plea agreement. This is not a matter properly before this Court on appeal from a probation violation, particularly as it does not appear that he raised the issue at the time of his probation violation. Nothing prevents Defendant from raising this issue in habeas proceedings if he so chooses.

For the reasons stated herein and in the notice of proposed disposition, we affirm.

IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

WE CONCUR:

CELIA FOY CASTILLO, Chief Judge

LINDA M. VANZI, Judge