

STATE V. DONOVAN W.

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 Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions.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.
DONOVAN W.,
Child-Appellant.**

No. 34,595

COURT OF APPEALS OF NEW MEXICO

December 29, 2015

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY, Sandra A. Price,
District Judge

COUNSEL

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

Jorge A. Alvarado, Chief Public Defender, J. K. Theodosia Johnson, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

MICHAEL E. VIGIL, Chief Judge. WE CONCUR: RODERICK T. KENNEDY, Judge, M. MONICA ZAMORA, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Chief Judge.

{1} Child Donovan W. (Child) appeals from a conditional consent decree for possession of drug paraphernalia entered following the district court's denial of his motion to suppress. [DS 1] In this Court's notice of proposed disposition, we proposed

to affirm. [CN 1, 5] Child filed a memorandum in opposition, which we have given due consideration. Remaining unpersuaded, we affirm.

{2} Child continues to argue in his memorandum in opposition that the marijuana and pipe found in Child's possession should be suppressed, because the search of his backpack and locker were premised on an inadmissible statement by Child and were otherwise unsupported by reasonable suspicion. [MIO 1–2] We noted in our proposed disposition, that the principal searched Child after a teacher saw students smoking marijuana in a bathroom, and the student questioned first admitted he had been smoking marijuana with Child. [CN 2–3] We proposed to hold, under these facts the search of Child was reasonable. *See State v. Pablo R.*, 2006-NMCA-072, ¶¶ 10, 12, 139 N.M. 744, 137 P.3d 1198 (“[W]hile probable cause is not required, the search of a student must still be reasonable under the circumstances in order to withstand constitutional scrutiny. . . . A school official must have reasonable grounds to suspect that a student has violated the law or a school rule and that a search will uncover evidence of that violation in order for the search to be constitutionally justified at its inception.” (internal quotation marks and citations omitted)).

{3} Beyond asserting the search of his backpack and locker was unreasonable, Child does not demonstrate how the principal's actions were not justified. Child has failed to point out any actual errors in fact or in law with this Court's notice. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law.”). Therefore, for the reasons stated above and in this Court's notice of proposed disposition, we affirm.

{4} IT IS SO ORDERED.

MICHAEL E. VIGIL, Chief Judge

WE CONCUR:

RODERICK T. KENNEDY, Judge

M. MONICA ZAMORA, Judge