STATE V. FOUST

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
DENNY FOUST,
Defendant-Appellant.

No. 34,060 & 34,074 (Consolidated)

COURT OF APPEALS OF NEW MEXICO

February 25, 2015

APPEAL FROM THE DISTRICT COURT OF LINCOLN COUNTY, Karen L. Parsons, District Judge

COUNSEL

Hector H. Balderas, Attorney General, James W. Grayson, Assistant Attorney General, Santa Fe, NM, for Appellee

Jorge A. Alvarado, Chief Public Defender, Kathleen T. Baldridge, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

LINDA M. VANZI, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge, J. MILES HANISEE, Judge

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Judge.

{1} Defendant challenges the district court's denial of his oral motion to withdraw his plea and proceed to trial. [DS unnumbered 1] This Court issued two calendar notices in

this case. In our second calendar notice, we proposed to affirm because Defendant was told, before entering his plea, that his plea was contingent only on the filing, not pursual, of federal charges, and federal charges were indeed filed. [2nd CN 4] Defendant has filed a memorandum in opposition to this Court's second calendar notice, which we have duly considered. Unpersuaded, we affirm.

{2} In this Court's second calendar notice, we proposed to hold that the district court did not abuse its discretion by not allowing Defendant to withdraw his plea because Defendant had been expressly informed prior to entry of the plea that he could only withdraw his plea if federal charges were never filed—and that Defendant could not withdraw his plea in the event that federal charges were filed but later dropped or dismissed. [2nd CN 4; MIO 5] Accordingly, we proposed to conclude that the district court adhered to the terms of the oral agreement made at the plea hearing and that Defendant's plea was entered into knowingly and voluntarily. [2nd CN 4] *See State v. Hunter*, 2006-NMSC-043, ¶ 12, 140 N.M. 406, 143 P.3d 168 ("A trial court abuses its discretion when it denies a motion to withdraw a plea that was not knowing or voluntary.").

{3} In his memorandum in opposition, Defendant does not dispute the factual recitation provided in our second calendar notice. Defendant agrees that the district court "explained to him that he could only withdraw his plea if the federal government declined to charge him" and that the court specifically told him "that if the federal government charged him, but decided not to proceed with the charge, he could not withdraw his plea." [2nd MIO 2] Defendant stated that he understood these terms and entered a plea of no contest. [2nd MIO 2, 5] Defendant maintains, however, that he should be allowed to withdraw his plea because he entered the plea "in contemplation of federal proceedings." [2nd MIO 6] In doing so, Defendant has failed to demonstrate that his plea was not entered into knowingly and voluntarily.

{4} Additionally, Defendant has advanced no new arguments in his memorandum in opposition. Accordingly, we conclude that Defendant has failed to demonstrate error on appeal. *See State v. Ibarra*, 1993-NMCA-040, ¶ 11, 116 N.M. 486, 864 P.2d 302 ("A party opposing summary disposition is required to come forward and specifically point out errors in fact and/or law.").

{5} For the reasons stated above and in this Court's second notice of proposed disposition, we affirm.

{6} IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

J. MILES HANISEE, Judge