

<b>STATE V. HART</b>
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**STATE OF NEW MEXICO,**  
Plaintiff-Appellee,  
**v.**  
**PHILLIP MORGAN HART,**  
Defendant-Appellant.

NO. 29,828

COURT OF APPEALS OF NEW MEXICO

February 16, 2010

APPEAL FROM THE DISTRICT COURT OF HIDALGO COUNTY, J. C. Robinson,  
District Judge

**COUNSEL**

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

Hugh W. Dangler, Chief Public Defender, Karl Erich Martell, Assistant Appellate  
Defender, Santa Fe, NM, for Appellant

**JUDGES**

MICHAEL D. BUSTAMANTE, Judge. WE CONCUR: CYNTHIA A. FRY, Chief Judge,  
JAMES J. WECHSLER, Judge

**AUTHOR:** MICHAEL D. BUSTAMANTE

**MEMORANDUM OPINION**

**BUSTAMANTE, Judge.**

Defendant attempts to appeal from the district court's May 5, 2009, judgment and sentence. This Court's first notice of proposed disposition proposed to not address issues concerning the voluntariness of the plea agreement because this Court's prior

opinion resolving those issues was the law of the case. We further proposed to hold that any substantive issues concerning the propriety of the plea agreement were waived when Defendant entered into a non-conditional plea agreement. The only issues reviewable on appeal were those related to the process on re-sentencing and the remand order to allow Defendant the opportunity for allocution. As to those issues, we proposed to hold that permitting the prosecutor to present argument against a lesser sentence did not prejudice Defendant because the same sentence was entered after Defendant was given an opportunity for allocution. Defendant acknowledges that this was the case. **[MIO 6]**

Pursuant to *State v. Franklin* and *State v. Boyer*, Defendant reiterates the same arguments raised in the docketing statement. *State v. Franklin*, 78 N.M. 127, 129, 428 P.2d 982, 984 (1967), and *State v. Boyer*, 103 N.M. 655, 658-60, 712 P.2d 1, 4-6 (Ct. App. 1985) (stating that on appeal, defense counsel has the duty to advance defendant's non-meritorious contentions on appeal). Defendant does not otherwise point to any errors in the fact or law. We are not persuaded by Defendant's arguments, and affirm the district court's judgment and sentence.

For these reasons, and those stated in the first notice of proposed disposition, we affirm.

**IT IS SO ORDERED.**

**MICHAEL D. BUSTAMANTE, Judge**

**WE CONCUR:**

**CYNTHIA A. FRY, Chief Judge**

**JAMES J. WECHSLER, Judge**