

STATE V. HERRERA

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
FRANCISCO R. HERRERA,
Defendant-Appellant.

No. 32,140

COURT OF APPEALS OF NEW MEXICO

June 11, 2013

APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY, Steven L. Bell,
District Judge

COUNSEL

Gary K. King, Attorney General, Yvonne M. Chicoine, Assistant Attorney General, Santa Fe, NM, for Appellee

Bennett J. Baur, Acting Chief Public Defender, Allison H. Jaramillo, Assistant Public Defender, Santa Fe, NM, for Appellant

JUDGES

CYNTHIA A. FRY, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge, LINDA M. VANZI, Judge

AUTHOR: CYNTHIA A. FRY

MEMORANDUM OPINION

FRY, Judge.

{1} Summary affirmance was proposed for the reasons stated in the calendar notice. No memorandum opposing summary affirmance has been filed, and the time for doing so has expired.

{2} Defendant has filed a response to the second calendar notice, stating that he will not be filing a memorandum in opposition to the second calendar notice. The State has also filed a response, stating that it will not be filing a memorandum in opposition to the second calendar notice. Therefore, for the reasons set forth in the first and second calendar notices, we affirm on Issues 1-4 and we reverse on Issues 5 and 6.

{3} Defendant admits that he was sentenced correctly because the parties agreed that this was Defendant's fourth DWI, and therefore a felony, as is aggravated DWI (.16 or above). [Def. MIO 10, RP 153] In accordance with the second calendar notice, however, we remand this case to the district court to correct the judgment and sentence to reflect Defendant's conviction for simple DWI (fourth offense) rather than aggravated DWI (.16 or above), pursuant to the jury's verdict forms. [RP 135, 136]

{4} IT IS SO ORDERED.

CYNTHIA A. FRY, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

LINDA M. VANZI, Judge