

**STATE V. JOHNSON**

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**STATE OF NEW MEXICO,  
Plaintiff-Appellee,  
v.  
GERALD JOHNSON, JR.,  
Defendant-Appellant.**

No. A-1-CA-36236

COURT OF APPEALS OF NEW MEXICO

February 12, 2018

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Stan Whitaker,  
District Judge

**COUNSEL**

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

Law Office of Scott M. Davidson, Ph.D, Scott M. Davidson, Albuquerque, NM, for  
Appellant

**JUDGES**

MICHAEL E. VIGIL, Judge. WE CONCUR: LINDA M. VANZI, Chief Judge, STEPHEN  
G. FRENCH, Judge

**AUTHOR:** MICHAEL E. VIGIL

**MEMORANDUM OPINION**

**VIGIL, Judge.**

{1} Defendant Gerald Johnson, Jr. appeals following re-sentencing upon remand by this Court and asserts on appeal the district court erred by denying him the opportunity

to allocute and to present mitigating evidence at his resentencing. [3 RP 553; DS 3-4] This Court issued a notice proposing to summarily reverse. [CN 1, 3-4] The State filed a response indicating it will not file a memorandum in opposition to our notice of proposed disposition. Therefore, based on the reasons set forth in this Court's notice of proposed disposition, we reverse.

**{2} IT IS SO ORDERED.**

**MICHAEL E. VIGIL, Judge**

**WE CONCUR:**

**LINDA M. VANZI, Chief Judge**

**STEPHEN G. FRENCH, Judge**