

STATE V. JUDD

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
vs.
KEITH RUSSELL JUDD,
Defendant-Appellant.

No. 31,857

COURT OF APPEALS OF NEW MEXICO

May 21, 2012

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, James F.
Blackmer, District Judge

COUNSEL

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

Keith Russell Judd, Pro se Appellant

JUDGES

TIMOTHY L. GARCIA, Judge. WE CONCUR: CELIA FOY CASTILLO, Chief Judge,
MICHAEL E. VIGIL, Judge

AUTHOR: TIMOTHY L. GARCIA

MEMORANDUM OPINION

GARCIA, Judge.

Defendant appeals an order denying his motion to vacate an order of dismissal. We proposed to affirm the district court as it lacked jurisdiction to rule on such a motion because Defendant had earlier filed a notice of appeal relating to the amended

judgment. Defendant has timely responded. We have considered his arguments and finding them unpersuasive, we affirm.

Defendant argues that the district court did not have jurisdiction to enter the original order of dismissal because he had an appeal pending. Therefore, he argues his motion to withdraw the order of dismissal should have been granted. Even if the district court did not have jurisdiction to enter the order of dismissal, that does not give it jurisdiction to enter an order vacating that order of dismissal when an appeal is pending. As there is currently an appeal pending in this matter, the district court did not err in denying Defendant's motion to vacate the dismissal.

For the reasons stated herein and in the notice of proposed disposition, we affirm the denial of Defendant's motion to vacate dismissal.

IT IS SO ORDERED.

TIMOTHY L. GARCIA, Judge

WE CONCUR:

CELIA FOY CASTILLO, Chief Judge

MICHAEL E. VIGIL, Judge