

STATE V. K JUDD

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

Docket No. 28,550

COURT OF APPEALS OF NEW MEXICO

April 30, 2009

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Neil C.
Candelaria, District Judge.

COUNSEL

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

Keith Russell Judd, Texarkana, TX, Pro se Appellant.

JUDGES

RODERICK T. KENNEDY, Judge. WE CONCUR: ROBERT E. ROBLES, Judge,
TIMOTHY L. GARCIA, Judge

AUTHOR: RODERICK T. KENNEDY

MEMORANDUM OPINION

KENNEDY, Judge.

Defendant appeals from an amended judgment reducing his sentence. The judgment was entered on June 11, 1998. The docketing statement was filed over ten years late on January 26, 2009. In this Court's notice of proposed summary disposition, we proposed to dismiss the appeal based on Defendant's untimely filing of the docketing statement. See Rule 12-312(A) NMRA ("If an appellant fails to file a docketing statement in the Court of Appeals . . . such failure may be deemed sufficient grounds for

dismissal of the appeal by the appellate court.”). In the alternative, we proposed to hold that because Defendant had entered into a plea agreement, he had waived the right to appeal any issues except those relating to the district court’s jurisdiction, and that Defendant’s one jurisdictional argument lacked merit. Defendant has not filed a memorandum in opposition, and the time to do so has passed. Accordingly, we dismiss Defendant’s appeal based on the untimely filing of the docketing statement. See *Frick v. Veazey*, 116 N.M. 246, 247, 861 P.2d 287, 288 (Ct. App. 1993) (“Failure to file a memorandum in opposition constitutes acceptance of the disposition proposed in the calendar notice., ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law.”)).

In addition, this Court has considered Defendant’s motion for leave to file an amended docketing statement and his motion for production of transcripts and the record proper. As we have dismissed Defendant’s appeal, we deny those motions as moot.

Therefore, for the reasons stated in this opinion, we dismiss Defendant’s appeal and deny his motions.

IT IS SO ORDERED.

RODERICK T. KENNEDY, Judge

WE CONCUR:

ROBERT E. ROBLES, Judge

TIMOTHY L. GARCIA, Judge