

**STATE V. KEATON**

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**STATE OF NEW MEXICO,  
Plaintiff-Appellee,  
v.  
MICHAEL STEPHEN KEATON,  
Defendant-Appellant.**

No. A-1-CA-35,052

COURT OF APPEALS OF NEW MEXICO

August 1, 2017

APPEAL FROM THE DISTRICT COURT OF LINCOLN COUNTY, Karen L. Parsons,  
District Judge

**COUNSEL**

Hector H. Balderas, Attorney General, Santa Fe, NM, M. Anne Kelly, Assistant Attorney General, Albuquerque, NM, for Appellee

Bennett J. Baur, Chief Public Defender, Nina Lalevic, Assistant Appellate Defender, Santa Fe, NM, for Appellant

**JUDGES**

JONATHAN B. SUTIN, Judge. WE CONCUR: LINDA M. VANZI, Chief Judge, J. MILES HANISEE, Judge

**AUTHOR:** JONATHAN B. SUTIN

**MEMORANDUM OPINION**

**SUTIN, Judge.**

{1} Defendant Michael Keaton appealed as a self-represented litigant from the district court's order denying his motion to reconsider the sentence. [3 RP 523] This

Court's second calendar notice proposed to reverse and remand to the district court for an evidentiary hearing on certain issues outlined therein. [CN 7] The State filed a "Notice of Non-Filing a Memorandum in Opposition." [Ct. App. File, top document] The State agrees with this Court's determination that the conclusive presumption of ineffective assistance of counsel established in *State v. Duran*, 1986-NMCA-125, 105 N.M. 231, 731 P.2d 374, does not apply in this context. [MIO 2] However, due to the unique circumstances of this case, the State does not oppose remand to the district court for consideration of the issues identified in this Court's second calendar notice. [Id.]

**{2}** For these reasons and those stated in this Court's second calendar notice, we reverse and remand to the district court.

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

**JONATHAN B. SUTIN, Judge**

**WE CONCUR:**

**LINDA M. VANZI, Chief Judge**

**J. MILES HANISEE, Judge**