

STATE V. LAMB

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
TERRANCE VYSHANN LAMB,
Defendant-Appellant.

No. 34,122

COURT OF APPEALS OF NEW MEXICO

May 5, 2015

APPEAL FROM THE DISTRICT COURT OF LUNA COUNTY, Daniel Viramontes,
District Judge

COUNSEL

Hector H. Balderas, Attorney General, Margaret McLean, Assistant Attorney General,
Santa Fe, NM, for Appellee

Attorney at Law Linda Helen Bennette, Albuquerque, NM, for Appellant

JUDGES

TIMOTHY L. GARCIA, Judge. WE CONCUR: RODERICK T. KENNEDY, Judge, J.
MILES HANISEE, Judge

AUTHOR: TIMOTHY L. GARCIA

MEMORANDUM OPINION

GARCIA, Judge.

{1} Defendant appeals his convictions, pursuant to a plea agreement, for the felony crimes of embezzlement and criminal damage to property. [RP 64] Our notice proposed

to affirm, and Defendant filed a memorandum in opposition. We remain unpersuaded by Defendant's arguments, and thus affirm.

{2} Defendant continues to argue he should have been allowed to withdraw his plea. [DS 2; MIO 1] See *generally State v. Carlos*, 2006-NMCA-141, ¶ 9, 140 N.M. 688, 147 P.3d 897 (“A motion to withdraw a guilty plea is addressed to the sound discretion of the trial court, and we review the trial court's denial of such a motion only for abuse of discretion.”). As a basis for his argument, Defendant maintains that his trial counsel was ineffective because he did not adequately pursue available defenses, or otherwise adequately communicate with Defendant and investigate his case for purposes of uncovering facts that would have brought these defenses to light. [MIO 3-6] See *generally State v. Joanna V.*, 2003-NMCA-100, ¶ 11, 134 N.M. 232, 75 P.3d 832 (“Where the defendant enters a plea upon her attorney's advice, the voluntariness and intelligence of the plea generally depends on whether she received ineffective assistance of counsel.”). As we provided in our notice, however, Defendant's ineffective assistance of counsel claim relates to matters not of record and thus does not provide a basis for relief on direct appeal. See *State v. Martinez*, 1996-NMCA-109, ¶ 25, 122 N.M. 476, 927 P.2d 31 (stating that “[t]his Court has expressed its preference for habeas corpus proceedings over remand when the record on appeal does not establish a prima facie case of ineffective assistance of counsel”).

{3} We accordingly affirm.

{4} IT IS SO ORDERED.

TIMOTHY L. GARCIA, Judge

WE CONCUR:

RODERICK T. KENNEDY, Judge

J. MILES HANISEE, Judge