

STATE V. LISTER

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
ISAAC LISTER,
Defendant-Appellant.**

No. 35,512

COURT OF APPEALS OF NEW MEXICO

November 29, 2016

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY, John A. Dean, Jr.,
District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, John Kloss, Assistant Attorney General, Albuquerque, NM, for Appellee

Bennett J. Baur, Chief Public Defender, B. Douglas Wood III, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

MICHAEL E. VIGIL, Chief Judge. WE CONCUR: JAMES J. WECHSLER, Judge,
TIMOTHY L. GARCIA, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Chief Judge.

{1} Defendant has appealed from convictions for fraud and conspiracy. In our second notice of proposed summary disposition, we proposed to affirm in part and reverse in part, specifically with respect to an apparent double jeopardy problem.

{2} The State has filed a responsive memorandum, indicating that it concurs with our proposed summary disposition. Defendant has filed a responsive memorandum in which he concurs with our proposed summary disposition relative to the double jeopardy issue, but continues to assert that he received ineffective assistance of counsel. For the reasons previously stated, we remain unpersuaded. However, our disposition as to this matter is without prejudice to Defendant's ability to bring such a claim by way of habeas corpus. See *State v. Arrendondo*, 2012-NMSC-013, ¶ 44, 278 P.3d 517 (declining to review an ineffective assistance claim on direct appeal, without prejudice to a defendant's right to make an adequate record and seek relief in the context of a post-conviction habeas corpus proceeding).

{3} Accordingly, for the reasons previously stated, we affirm Defendant's conviction for fraud and one of Defendant's convictions for conspiracy, but vacate the other conviction for conspiracy. We remand to the district court for resentencing.

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

MICHAEL E. VIGIL, Chief Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

TIMOTHY L. GARCIA, Judge