

**STATE V. MARIANO**

This memorandum opinion was not selected for publication in the New Mexico Appellate Reports. Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions. Please also note that this electronic memorandum opinion may contain computer-generated errors or other deviations from the official paper version filed by the Court of Appeals and does not include the filing date.

**STATE OF NEW MEXICO,  
Plaintiff-Appellee,  
v.  
FERNANDO MARIANO,  
Defendant-Appellant.**

No. A-1-CA-35,469

COURT OF APPEALS OF NEW MEXICO

August 11, 2017

APPEAL FROM THE DISTRICT COURT OF MCKINLEY COUNTY, Robert A. Aragon,  
District Judge

**COUNSEL**

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

Bennett J. Baur, Chief Public Defender, Will O'Connell, Assistant Appellate Defender,  
Santa Fe, NM, for Appellant

**JUDGES**

J. MILES HANISEE, Judge. WE CONCUR: LINDA M. VANZI, Chief Judge, MICHAEL  
E. VIGIL, Judge

**AUTHOR:** J. MILES HANISEE

**MEMORANDUM OPINION**

**HANISEE, Judge.**

{1} Defendant Fernando Mariano appeals the district court's determination at sentencing that he committed a serious violent offense for purposes of good-time credit under the Earned Meritorious Deductions Act (EMDA), NMSA 1978, Section 33-2-34

(2015). We previously issued a notice of proposed summary disposition in which we proposed to affirm. Defendant has filed a memorandum in opposition. After due consideration, we are unpersuaded. We therefore affirm.

**{2}** The pertinent background information was set forth in the notice of proposed summary disposition. We will avoid undue repetition here and focus instead on the content of the memorandum in opposition.

**{3}** In the memorandum in opposition, Defendant reiterates his position that the district court abused its discretion in finding that Defendant committed a serious violent offense under the EMDA. [MIO 2] Defendant now argues that the district court did so because its “conclusion rested upon the resulting harm and not upon the nature of the offense or [Defendant’s] conduct.” [MIO 5] Contrary to Defendant’s assertion, however, the district court found that “[D]efendant acted in a physically violent manner” and “with an intent to do serious harm or with recklessness in the face of knowledge that his actions were reasonably likely to cause serious harm.” [RP 282] In our calendar notice, we proposed to hold that these two findings were supported by substantial evidence below. [CN 3-4] Defendant does not challenge this proposed conclusion in the memorandum in opposition, [MIO 1-5] and we therefore adopt it.

**{4}** Accordingly, for the reasons stated above and in the notice of proposed summary disposition, we affirm.

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

**J. MILES HANISEE, Judge**

**WE CONCUR:**

**LINDA M. VANZI, Chief Judge**

**MICHAEL E. VIGIL, Judge**