

STATE V. MAZZEI

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
PATRICK MAZZEI,
Defendant-Appellant.

NO. 30,746

COURT OF APPEALS OF NEW MEXICO

March 28, 2011

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Robert M.
Schwartz, District Judge

COUNSEL

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

Fuentes & Associates, P.C., Robert R. Fuentes, Rio Rancho, NM, for Appellant

JUDGES

MICHAEL E. VIGIL, Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge,
RODERICK T. KENNEDY, Judge

AUTHOR: MICHAEL E. VIGIL

MEMORANDUM OPINION

VIGIL, Judge.

Defendant appeals from a conditional plea and disposition agreement in which he pleaded guilty to one count of aggravated driving under the influence (Fourth or Subsequent Offense). [RP 115] This Court issued a calendar notice proposing to dismiss Defendant's appeal for lack of a final order. Specifically, we proposed to

conclude that because sentencing was left pending while the Defendant's case was referred to drug court, and because no final judgment and sentence was entered, Defendant's notice of appeal was premature. See *State v. Garcia*, 99 N.M. 466, 471, 659 P.2d 918, 923 (Ct. App. 1983) (holding that in a criminal case the final judgment is the judgment and sentence or an order dismissing all charges against the defendant).

Defendant has filed a response to this Court's notice of proposed summary disposition. In his response, Defendant concurs with this Court's proposed disposition of dismissal. We therefore dismiss Defendant's appeal as premature. Defendant may re-file his appeal once a final judgment and sentence has been entered.

IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Judge

RODERICK T. KENNEDY, Judge