

**STATE V. OLIVAS-JAQUEZ**

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**STATE OF NEW MEXICO,**  
Plaintiff-Appellee,  
v.  
**ALEJANDRO OLIVAS-JAQUEZ,**  
Defendant-Appellant.

NO. 32,684

COURT OF APPEALS OF NEW MEXICO

September 24, 2013

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY, William G. Shoobridge,  
District Judge

**COUNSEL**

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

Bennett J. Baur, Acting Chief Public Defender, Kathleen T. Baldrige, Assistant  
Appellate Defender, Santa Fe, NM, for Appellant

**JUDGES**

JAMES J. WECHSLER, Judge. WE CONCUR: MICHAEL E. VIGIL, Judge, LINDA M.  
VANZI, Judge

**AUTHOR:** JAMES J. WECHSLER

**MEMORANDUM OPINION**

**WECHSLER, Judge.**

{1} Defendant appeals from the district court's judgment and sentence, entered pursuant to a conditional plea, convicting him for fraudulently obtaining a controlled substance. Defendant challenges the district court's denial of his motion to dismiss.

Unpersuaded that Defendant demonstrated error, we issued a notice of proposed summary disposition, proposing to affirm. Defendant has responded with a memorandum in opposition to our notice. We remain unpersuaded by Defendant's arguments and affirm.

**{2}** On appeal, Defendant argues that the district court should have granted his motion to dismiss for the violation of his right to a speedy trial and for the failure to timely arraign him under Rule 5-303(A) NMRA. [DS 3-4; MIO 4-8] Our notice proposed to reject Defendant's speedy trial claim because the five-month length of delay did not trigger the need for constitutional inquiry into the *Barker* factors. See *State v. Garza*, 2009-NMSC-038, ¶¶ 2, 48, 146 N.M. 499, 212 P.3d 387. [RP 1, 76-79] In response to our notice, Defendant does not dispute this proposed analysis, but clarifies that his argument focuses on his untimely arraignment under Rule 5-303(A) and not the traditional speedy trial analysis. [MIO 5]

**{3}** With respect to Defendant's arraignment, our notice proposed to hold that Defendant had not shown the prejudice required for dismissal based on an untimely arraignment. See *State v. Coburn*, 1995-NMCA-063, ¶¶ 10-11, 120 N.M. 214, 900 P.2d 963, (indicating that the prejudice required to be shown for violation of the arraignment deadline is some unfairness in the criminal proceeding that resulted from the failure to timely arraign) *superseded by rule on other grounds*, Rule 6-504 NMRA. Defendant does not allege that the failure to timely arraign him resulted in any particular unfairness in the process, during which he intended to plead guilty; rather, Defendant's claimed prejudice was a delay in his deportation and treatment for his back injury. [RP 49, 55-56; DS 2-3; MIO 7] Defendant does not refer us to any controlling authority, and we are not aware of any, that would support dismissal for a claim of prejudice that is of a such personal nature independent from the criminal proceedings. See *Coburn*, 1995-NMCA-016, ¶ 10 (indicating that prejudice is not shown where a defendant is "advised of the pending charge, he had an attorney to represent him, and his ability to defend himself was not diminished in any way"); *In re Adoption of Doe*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 (holding that an appellate court will not consider an issue if no authority is cited in support of the issue; as absent cited authority to support an argument, we assume no such authority exists). We continue to believe that some other form of relief would have been appropriate to seek medical treatment while in custody.

**{4}** For the reasons stated above and in our notice, we affirm the district court's denial of Defendant's motion to dismiss.

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

**JAMES J. WECHSLER, Judge**

**WE CONCUR:**

**MICHAEL E. VIGIL, Judge**

**LINDA M. VANZI, Judge**