

STATE V. ORTEGA

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JAMES A. ORTEGA,
Defendant-Appellant.**

NO. 34,203

COURT OF APPEALS OF NEW MEXICO

April 8, 2015

APPEAL FROM THE DISTRICT COURT OF CHAVEZ COUNTY, Steven L. Bell, District
Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, Kenneth H. Stalter, Assistant
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JUDGES

JAMES J. WECHSLER, Judge. WE CONCUR: MICHAEL E. VIGIL, Chief Judge,
MICHAEL D. BUSTAMANTE, Judge

AUTHOR: JAMES J. WECHSLER

MEMORANDUM OPINION

WECHSLER, Judge.

{1} Defendant appeals the district court's determination that his kidnapping conviction is a "serious violent offense" for the purposes of the Earned Meritorious Deductions Act (EMDA), NMSA 1978, § 33-2-34 (2006). We proposed to hold that the

district court did not provide a sufficient basis for denying credit under the EMDA. The State has responded by indicating that it opposes our calendar notice only to the extent that it asks us to remand for additional factfinding on the EMDA issue, if appropriate. [MIO 3] We agree that remand for reconsideration of the issue is appropriate. *State v. Morales*, 2002-NMCA-016, ¶ 19, 131 N.M. 530, 39 P.3d 747, *abrogated on other grounds by State v. Frawley*, 2007-NMSC–057, ¶ 36, 143 N.M. 7, 172 P.3d 144.

{2} For the reasons set forth above and in our calendar notice, we reverse the EMDA determination and remand this matter to the district court pursuant to *Morales*.

{3} IT IS SO ORDERED.

JAMES J. WECHSLER, Judge

WE CONCUR:

MICHAEL E. VIGIL, Chief Judge

MICHAEL D. BUSTAMANTE, Judge