

STATE V. RANKIN

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
RUSSELL RANKIN,
Defendant-Appellant.

No. 32,874

COURT OF APPEALS OF NEW MEXICO

October 8, 2013

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Brett R.
Loveless, District Judge

COUNSEL

Gary K. King, Attorney General, Pranava Upadrashta, Assistant Attorney General,
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JUDGES

MICHAEL D. BUSTAMANTE, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge,
CYNTHIA A. FRY, Judge

AUTHOR: MICHAEL D. BUSTAMANTE

MEMORANDUM OPINION

BUSTAMANTE, Judge.

{1} Rankin appeals his sentence, arguing that the district court erred in the amount of presentence confinement credit it awarded him. In our notice of proposed summary

disposition, we proposed to agree that the district court erred. However, we stated that, contrary to Rankin's arguments, we believed that the district erred by awarding Rankin more credit than he was entitled to, rather than less. We stated that it appeared that the district court properly refused to award credit for the 428-day period during which Rankin was incarcerated prior to sentencing in both a prior case and in this one, but that it erred in awarding credit for the 502-day period during which Rankin was serving a sentence in the prior case and awaiting sentencing in this one. We therefore proposed to reverse and remand for resentencing without the 502-day credit.

{2} The State has filed a memorandum in support of this Court's proposed summary disposition. Rankin has not filed a memorandum in opposition, and the time for doing so has passed. See Rule 12-210(D)(3) NMRA. Accordingly, for the reasons stated in our notice of proposed summary disposition, we reverse and remand for resentencing without the 502-day credit. See *Frick v. Veazey*, 1993-NMCA-119, ¶ 2, 116 N.M. 246, 861 P.2d 287 ("Failure to file a memorandum in opposition constitutes acceptance of the disposition proposed in the calendar notice.").

{3} IT IS SO ORDERED.

MICHAEL D. BUSTAMANTE, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

CYNTHIA A. FRY, Judge