

STATE V. SEPULVEDA

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JOSEPH SEPULVEDA,
Defendant-Appellant.

No. 34,219

COURT OF APPEALS OF NEW MEXICO

June 24, 2015

APPEAL FROM THE DISTRICT COURT OF GRANT COUNTY, J.C. Robinson, District
Judge

COUNSEL

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

Jorge A. Alvarado, Chief Public Defender, J.K. Theodosia Johnson, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

JAMES J. WECHSLER, Judge. WE CONCUR: MICHAEL D. BUSTAMANTE, Judge,
JONATHAN B. SUTIN, Judge

AUTHOR: JAMES J. WECHSLER

MEMORANDUM OPINION

WECHSLER, Judge.

{1} Defendant appeals from the denial of his motion to withdraw his plea agreement and resulting judgment and sentence convicting him of escape from jail, pursuant to NMSA 1978, Section 30-22-8 (1963), and possession of methamphetamine, pursuant to

NMSA 1978, Section 30-31-23(E) (2011). [RP 85, 92, 73-77¹] We issued a notice of proposed summary disposition, proposing to affirm. In response to our notice, Defendant has filed a memorandum in opposition. Having considered Defendant's arguments, we remain unpersuaded, and therefore affirm the district court.

{2} Defendant continues to argue, pursuant to *State v. Franklin*, 1967-NMSC-151, 78 N.M. 127, 428 P.2d 982, and its progeny, that he should have been allowed to withdraw his plea. [DS 4; MIO 2-3] See generally *State v. Carlos*, 2006-NMCA-141, ¶ 9, 140 N.M. 688, 147 P.3d 897 (“A motion to withdraw a guilty plea is addressed to the sound discretion of the trial court, and we review the trial court’s denial of such a motion only for abuse of discretion.” (internal quotation marks and citation omitted)). As the basis for his argument, Defendant maintains that his plea was not knowing and voluntary for various reasons that were set forth in our proposed disposition. [DS 3-5; MIO 1-2; CN 2-3] See *State v. Hunter*, 2006-NMSC-043, ¶ 12, 140 N.M. 406, 143 P.3d 168. (“A trial court abuses its discretion when it denies a motion to withdraw a plea that was not knowing or voluntary.”). Our notice of proposed summary disposition fully addressed Defendant’s arguments relative to this issue, and Defendant’s memorandum in opposition fails to respond to this Court’s analysis of Defendant’s issue. See *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that “[a] party responding to a summary calendar notice must come forward and specifically point out errors of law and fact,” and the repetition of earlier arguments does not fulfill this requirement), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. Accordingly, for the reasons stated in this Court’s proposed summary disposition, we conclude that the district court did not abuse its discretion in denying Defendant’s motion to withdraw his plea. We therefore affirm.

{3} IT IS SO ORDERED.

JAMES J. WECHSLER, Judge

WE CONCUR:

MICHAEL D. BUSTAMANTE, Judge

JONATHAN B. SUTIN, Judge

¹ There are two separate records with different district court numbers in this case; citations are to D-608-CR-2014-00097.