

STATE V. THROWER

This memorandum opinion was not selected for publication in the New Mexico Appellate Reports. Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions. Please also note that this electronic memorandum opinion may contain computer-generated errors or other deviations from the official paper version filed by the Court of Appeals and does not include the filing date.

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
BRANDT THROWER,
Defendant-Appellant.

No. 35,189

COURT OF APPEALS OF NEW MEXICO

June 7, 2016

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY, Dalene Marsh,
District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, M. Anne Kelly, Assistant Attorney General, Albuquerque, NM, for Appellee

Tyson Quail, Farmington, NM, for Appellant

JUDGES

MICHAEL D. BUSTAMANTE, Judge. WE CONCUR: MICHAEL E. VIGIL, Chief Judge,
TIMOTHY L. GARCIA, Judge

AUTHOR: MICHAEL D. BUSTAMANTE

MEMORANDUM OPINION

BUSTAMANTE, Judge.

{1} Having entered a conditional plea in magistrate court, Defendant Brandt Thrower appealed to the district court for review of the denial of his motion to dismiss. The district court also denied Defendant's motion to dismiss, **[RP 30]** and this appeal

followed. Summary reversal was proposed for the reasons stated in the notice of proposed disposition filed on April 15, 2016. On May 16, 2016, the State filed a response to our proposed disposition noting its intention not to file a memorandum in opposition. Accordingly, we reverse the district court's denial of Defendant's motion to dismiss for the reasons stated in this Court's notice of proposed disposition. In addition, consistent with the procedures set forth in *State v. Celusniak*, 2004-NMCA-070, ¶¶ 8-15, 135 N.M. 728, 93 P.3d 10, we remand to the district court so that it may issue an order of remand to the magistrate court permitting Defendant to withdraw his conditional plea.

{2} IT IS SO ORDERED.

MICHAEL D. BUSTAMANTE, Judge

WE CONCUR:

MICHAEL E. VIGIL, Chief Judge

TIMOTHY L. GARCIA, Judge