

**STATE V. WEINBERGER**

This memorandum opinion was not selected for publication in the New Mexico 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 Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions.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.  
**SHANNON WEINBERGER,**  
Defendant-Appellant.

NO. 31,318

COURT OF APPEALS OF NEW MEXICO

August 30, 2011

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Denise Barela-Shepherd, District Judge

**COUNSEL**

Gary K. King, Attorney General, Santa Fe, NM, Jacqueline R. Medina, Assistant, Albuquerque, NM, for Appellee

Jacqueline L. Cooper, Acting Chief Public Defender, Santa Fe, NM, for Appellant

**JUDGES**

JAMES J. WECHSLER, Judge. WE CONCUR: CYNTHIA A. FRY, Judge, MICHAEL E. VIGIL, Judge.

**AUTHOR:** JAMES J. WECHSLER.

**MEMORANDUM OPINION**

**WECHSLER, Judge.**

Defendant appeals her sentence and argues that the district court erred in allowing the State to pursue habitual offender proceedings because the State did not present sufficient evidence of a violation of the plea agreement. We issued a calendar notice in

which we proposed summary reversal on July 26, 2011. The State has responded with a timely memorandum in response to the notice of proposed summary reversal.

In this case, the district court determined that Defendant violated her conditions of release, and therefore the State could seek a habitual offender enhancement under the plea agreement. **[DS 4, State's response 4]** In our notice of proposed summary disposition, we proposed to reverse the district court in part because the plea agreement, by its terms, did not contemplate that habitual offender proceedings could be initiated based on a violation of Defendant's conditions of release. **[CN 4-5]** In its response, the State agrees that the plea agreement did not permit enhancement of Defendant's sentence for a violation of her conditions of release and that the enhancement of Defendant's sentence should be reversed. **[State's response 4, 8]** Accordingly, we reverse the district court on this basis.

**IT IS SO ORDERED**

**JAMES J. WECHSLER, Judge**

**WE CONCUR:**

**CYNTHIA A. FRY, Judge**

**MICHAEL E. VIGIL, Judge**