STATE V. YANEZ-HERNANDEZ

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
DIONISIO YANEZ-HERNANDEZ,
Defendant-Appellant.

No. 32,836

COURT OF APPEALS OF NEW MEXICO

December 9, 2013

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Christina Pete Argyres, District Judge

COUNSEL

Gary K. King, Attorney General, Santa Fe, NM, for Appellee

Jorge A. Alvarado, Chief Public Defender, Santa Fe, NM, Vicki W. Zelle, Assistant Public Defender, Albuquerque, NM, for Appellant

JUDGES

TIMOTHY L. GARCIA, Judge. WE CONCUR: RODERICK T. KENNEDY, Chief Judge, CYNTHIA A. FRY, Judge

AUTHOR: TIMOTHY L. GARCIA

MEMORANDUM OPINION

GARCIA, Judge.

{1} Defendant appeals from a conviction for DWI. We previously issued a notice of proposed summary disposition in which we proposed to uphold the conviction.

Defendant has filed a memorandum in opposition. After due consideration, we remain unpersuaded. We therefore affirm.

{2} Defendant has raised two issues, challenging the denial of his motion to dismiss for violation of both the six-month rule and his constitutional right to a speedy trial. Because the pertinent background information has previously been set out and is essentially undisputed, we will avoid unnecessary reiteration here.

{3} Relative to the six-month rule, Defendant continues to assert that a bench warrant was improperly issued when he was in federal custody. [MIO 14-15, 17-18] Contrary to Defendant's assertions, however, it is not at all clear that knowledge of Defendant's *federal* incarceration should be imputed to the State. *Compare State v. Maddox*, 2008-NMSC-062, ¶ 17, 145 N.M. 242, 195 P.3d 1254 (declining to charge the State with constructive knowledge of the defendant's location while he was incarcerated in another state); *with State v. Urban*, 2004-NMSC-007, ¶ 15, 135 N.M. 279, 87 P.3d 1061 ("[T]he State should be charged with constructive knowledge of the whereabouts of those in its custody.").

{4} Even if we were to assume that the bench warrant was initially issued improvidently, Defendant's subsequent failure to appear at a scheduled hearing when he was no longer in federal custody also supplied an appropriate predicate for the continuation of the bench warrant. *See generally* Rule 7-207(A) NMRA (providing that the metro courts may issue bench warrants for failure to appear); *State v. Granado*, 2007-NMCA-058, ¶ 23, 141 N.M. 575, 158 P.3d 1018 (observing that a metro court judge clearly has authority to issue a bench warrant to arrest a defendant for failure to appear). Defendant continues to argue that his failure to appear was occasioned by a mailing error which deprived him of notice. [MIO 13, 15, 17] However, due to Defendant's failure to preserve this issue by presenting any argument or to request any ruling relative to the alleged lack of notice at the metro court level, it supplies no basis for relief on appeal. *See, e.g.*, *State v. Steven B.*, 2004-NMCA-086, ¶ 7, 136 N.M. 111, 94 P.3d 854 (declining to consider a notice issue for lack of preservation); *see generally State v. Elliott*, 2001-NMCA-108, ¶ 21, 131 N.M. 390, 37 P.3d 107 ("Our case law is clear that in order to preserve an issue for appeal, a defendant must make a timely objection that specifically apprises the [district] court of the nature of the claimed error and invokes an intelligent ruling thereon.").

{5} In light of the foregoing considerations, the six-month period commenced only after Defendant appeared at a subsequent hearing, at which time the bench warrant was quashed. *See generally* Rule 7-506(B)(5) NMRA) (providing for commencement of the six-month rule upon arrest or surrender for failure to appear); *cf. Granado*, 2007-NMCA-058, ¶ 26 (holding that a defendant could not be said to have surrendered for failure to appear where no bench warrant had actually been issued). As a consequence, we conclude that no six-month-rule violation occurred.

{6} In closing, we acknowledge Defendant's assertions that the underlying proceedings could have been pursued in a more efficient manner. However, "[t]he 182-

day rule . . . is to be applied with common sense and not used to effect technical dismissals." *State v. Marquez*, 2008-NMCA-133, ¶ 13, 145 N.M. 31, 193 P.3d 578, *rev'd on other grounds*, 2009-NMSC-055, 147 N.M. 386, 223 P.3d 931 (internal quotation marks and citation omitted). To this end, we note that Rule 7-506 was amended during the pendency of the underlying proceedings. *See Duran v. Eichwald*, 2009-NMSC-030, ¶ 15, 146 N.M. 341, 210 P.3d 238 (expressing dissatisfaction with the dismissal provision of the six-month rule, and noting the amendments to the corresponding versions for courts of limited jurisdiction, including Rule 7-506, to avoid unwarranted technical dismissals). In this case we are unpersuaded that the delays caused injustice or effectively denied Defendant due process, [MIO 19-20] such that dismissal was warranted. We therefore reject Defendant's first claim of error.

{7} Turning to the second issue raised on appeal, Defendant renews his speedy trial argument. He contends that the fifteen and one-half month delay in this simple case was impermissible in light of the fact that most of the delay was occasioned by "institutional negligence" attributable to the State, the fact that he asserted his right in a timely fashion, and the fact that he suffered prejudice. [MIO 20-24] However, as previously mentioned our authorities do not impute knowledge of Defendant's federal incarceration to the State, and in light of Defendant's failure to adequately preserve his notice argument relative to the second failure to appear, we remain unpersuaded that the associated delays are attributable to the State. [MIO 22] Relative to prejudice, we remain unpersuaded that Defendant's assertions of restricted employment opportunities, stress and embarrassment adequately establish prejudice. [MIO 23] *See, e.g.*, *State v. Spearman*, 2012-NMSC-023, ¶¶ 38-39, 283 P.3d 272 (rejecting a claim of prejudice where nothing of record substantiated the defendant's claims of adverse employment consequence); *State v. Garza*, 2009-NMSC-038, ¶ 37, 146 N.M. 499, 212 P.3d 387 (observing that a non-particularized assertion of "stress" is "not the type of prejudice against which the speedy trial right protects"). And finally, insofar as the bond forfeiture appears to have been occasioned by the immigration hold rather than any improper delay in this case, [RP 121] we do not regard this as pertinent. [MIO 23] We therefore reject Defendant's speedy trial argument.

{8} Accordingly, for the reasons stated above and in the notice of proposed summary disposition, we affirm.

{9} IT IS SO ORDERED.

TIMOTHY L. GARCIA, Judge

WE CONCUR:

RODERICK T. KENNEDY, Chief Judge

CYNTHIA A. FRY, Judge