

STATE V. GOMEZ

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
MARIO GOMEZ,
Defendant-Appellant.**

No. A-1-CA-36896

COURT OF APPEALS OF NEW MEXICO

February 19, 2019

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY, Fernando R.
Macias, District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, Lauren J. Wolongevicz, Assistant Attorney General, Albuquerque, NM, for Appellee

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JUDGES

J. MILES HANISEE, Judge. WE CONCUR: LINDA M. VANZI, Judge, JULIE J. VARGAS, Judge

AUTHOR: J. MILES HANISEE

MEMORANDUM OPINION

HANISEE, Judge.

{1} Defendant appeals following the district court entering judgment against him that included a requirement that Defendant pay restitution to the Metro Narcotics Agency Contingency Fund. On appeal, Defendant contends that the district court's requirement

that Defendant pay restitution was not a proper legal remedy in this case and/or, “even if restitution is found to be proper, [he] should not be required to pay restitution on dismissed conspiracy counts.” [DS 3] This Court issued a second calendar notice proposing to conclude that, because Defendant was only convicted on one count of trafficking and the remaining two conspiracy to commit trafficking charges were dismissed, only \$150 of restitution was proper.

{2} In response, the State has filed a notice indicating that it will not file a memorandum in opposition to this Court’s second calendar notice, and Defendant has filed a memorandum in opposition continuing to argue that the Metro Narcotics Agency cannot be a “victim” for the purpose of restitution. As Defendant makes no new arguments regarding restitution, *see State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (providing 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point out errors of law and fact, and the repetition of earlier arguments does not fulfill this requirement), *superceded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374, we proceed with summary affirmance, in part, and summary reversal, in part.

{3} IT IS SO ORDERED.

J. MILES HANISEE, Judge

WE CONCUR:

LINDA M. VANZI, Judge

JULIE J. VARGAS, Judge