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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-38292

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

DEBRYANT BANKS,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY
Lee A. Kirksey, District Judge

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Lauren J. Wolongevicz, Assistant Attorney General
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for Appellee

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for Appellant

MEMORANDUM OPINION

VANZI, Judge.

{1} Defendant appeals the district court's judgment and sentence and commitment to the New Mexico Department of Corrections based upon the court's determination that Defendant's conviction for robbery was a "serious violent offense," pursuant to the Earned Meritorious Deductions Act (EMDA), NMSA 1978, Section 33-2-34(L)(4)(o)(13) (2015). This Court filed a notice of proposed disposition proposing to reverse and

remand on the basis that it is for the district court in the first instance to make findings related to its application of the EMDA, and therefore, absent any such findings, this Court is unable to review whether the district court abused its discretion. [CN 2-3] The State filed a notice of non-opposition, indicating that it will not be filing a memorandum in opposition to the notice of proposed disposition. Defendant filed a notice of intent not to file a memorandum in support, but did not otherwise expressly indicate its opposition or point to any error in fact or law with the proposed disposition. *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a party responding to a summary calendar notice must come forward and specifically point out errors of law and fact), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374.

{2} We therefore reverse and remand to the district court for consideration of whether the facts in the record support a determination that Defendant's robbery conviction constituted a serious violent offense under the EMDA and for entry of findings in that regard.

{3} IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:

KRISTINA BOGARDUS, Judge

JACQUELINE R. MEDINA, Judge