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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-38455

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

JOSEPH JACKSON,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

Daniel J. Gallegos, Jr., District Judge

Hector H. Balderas, Attorney General
Santa Fe, NM

for Appellee

Bennet J. Baur, Chief Public Defender
John Bennett, Assistant Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

HANISEE, Chief Judge.

{1} Defendant appeals from the district court's affirmance of his conviction for driving while under the influence and a seat belt violation, following a jury trial in metropolitan court. In this Court's notice of proposed disposition, we proposed to affirm. Defendant filed a memorandum in opposition, which we have duly considered. Remaining unpersuaded, we affirm.

{2} Defendant continues to assert on appeal, as he did in his on-record appeal to the district court, that his case should be dismissed for failure to commence trial within the Rule 7-506(B) NMRA time limit because Defendant did not personally assert his

intention to waive this Rule's time limitations. [MIO] Our notice of proposed disposition proposed was to affirm, as the district court issued a thorough, well-reasoned memorandum opinion, presenting the facts and arguments of the case and the district court's analysis in response thereto. [CN 2] We proposed to agree with the district court in its factual presentation, analysis, and conclusion, and proposed to adopt the district court's memorandum opinion for purposes of this appeal. [CN 2]

{3} In his memorandum in opposition (MIO), Defendant continues to liken waiver of the Rule's time limitations to waiver of the constitutional right to speedy trial, thereby arguing that Rule 7-506 confers a personal right on defendants that may not be waived on their behalf by counsel. [MIO 3-4] As such, Defendant argues that it was error for this Court to propose to affirm the district court's determination that Defendant failed to preserve the issue of his waiver's validity for appeal. [MIO 5] We remain unpersuaded that Defendant has demonstrated error in this respect as Defendant's arguments are contrary to established law in New Mexico. *See State v. Hoffman*, 1992-NMCA-098, ¶¶ 1, 6-7, 114 N.M. 445, 839 P.2d 1333 (holding that the purpose of Rule 7-506(B) is to "encourage the prompt and orderly disposition of cases, not to effectuate dismissal" and, consistent with this purpose, requiring a defendant to raise the issue of whether or not this Rule was violated in the metropolitan court to preserve it for review on appeal to the district court); *see also State v. Candelario*, 2008-NMCA-119, ¶ 6, 144 N.M. 794, 192 P.3d 789 (explaining that the administrative purpose of Rule 7-506(B) distinguishes its application from the constitutional speedy trial analysis).

{4} Moreover, we have previously held that a defendant may waive through counsel the application of Rule 6-506(B) NMRA, the six-month rule for magistrate courts. *State v. Dorais*, 2016-NMCA-049, ¶ 19, 370 P.3d 771 ("[The d]efendant, through counsel, waived the application of [Rule 6-506.]"). The language of Rule 6-506(C)(1) pertaining to waiver of the time limits is identical to that of Rule 7-506(C)(1). Further, we have previously concluded that a defendant's statutory right to be brought to trial within a specified time, as opposed to a defendant's right to a speedy trial, may be waived by defense counsel on behalf of a defendant. *See State v. O'Neal*, 2009-NMCA-020, ¶¶ 11, 22, 145 N.M. 604, 203 P.3d 135 (concluding that a defendant's waiver of the six month rule formerly applicable to district courts was "effective even though it was signed only by [the d]efendant's counsel" and indicating that such a waiver may be effectuated in some circumstances even in the absence of a defendant's express consent). As such, we are unpersuaded that Defendant's appeal raises a novel issue appropriate for resolution only on the general calendar. [MIO 6]

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

{6} IT IS SO ORDERED.

J. MILES HANISEE, Chief Judge

WE CONCUR:

KRISTINA BOGARDUS, Judge

ZACHARY A. IVES, Judge