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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-38988

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

ZARKO YANES,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY

Daniel Jose Gallegos, Jr., District Judge

Hector H. Balderas, Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Santa Fe, NM
Steven J. Forsberg, Assistant Public Defender
Albuquerque, NM

for Appellant

MEMORANDUM OPINION

HANISEE, Chief Judge.

{1} Defendant appeals his conviction for driving while intoxicated. In this Court's notice of proposed disposition, we proposed to summarily affirm. Defendant filed a memorandum in opposition, which we have duly considered. Remaining unpersuaded, we affirm.

{2} In his memorandum in opposition, Defendant maintains that there was insufficient evidence to support his conviction. [MIO 1] Defendant, however, has not asserted any new facts, law, or argument that persuade us that our notice of proposed

disposition was erroneous. See *Hennessey v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law.”); *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point out errors of law and fact, and the repetition of earlier arguments does not fulfill this requirement), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. We therefore refer Defendant to our analysis therein.

{3} Accordingly, for the reasons stated in our notice of proposed disposition and herein, we summarily affirm Defendant’s conviction.

{4} IT IS SO ORDERED.

J. MILES HANISEE, Chief Judge

WE CONCUR:

KRISTINA BOGARDUS, Judge

MEGAN P. DUFFY, Judge