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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-39502

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

JOHN BRANHAM,

Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY
Fred T. Van Soelen, District Judge**

Hector H. Balderas, Attorney General
Santa Fe, NM
Charles J. Gutierrez, Assistant Attorney General
Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

DUFFY, Judge.

{1} Defendant appeals his sentence to the enhanced period of parole outlined in NMSA 1978, Section 31-21-10.1(A) (2007). In this Court's notice of proposed disposition, we proposed to summarily reverse. The State filed a memorandum in opposition, which we have duly considered. Remaining unpersuaded, we reverse.

{2} In its memorandum in opposition, the State argues that Defendant's sentence to an enhanced period of parole was proper. [MIO 1] The State, however, has not asserted any new facts, law, or argument that persuade this Court 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point out errors of law and fact, and the repetition of earlier arguments does not fulfill this requirement), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374.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 reverse Defendant’s sentence and remand this case to the district court for proceedings consistent with our notice of proposed disposition.

{4} IT IS SO ORDERED.

MEGAN P. DUFFY, Judge

WE CONCUR:

KRISTINA BOGARDUS, Judge

JANE B. YOHALEM, Judge