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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-39685

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

DAVID GARCIA,

Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT OF SAN MIGUEL COUNTY
Gerald E. Baca, District Judge**

Hector H. Balderas, Attorney General
Santa Fe, NM
John Kloss, Assistant Attorney General
Albuquerque, NM

for Appellee

Bennett J. Baur, Chief Public Defender
Kathleen T. Baldrige, Assistant Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

BOGARDUS, Judge.

{1} Following jury trial, Defendant appeals from the district court's judgment and sentence convicting him of criminal sexual penetration of a child in the second degree. We issued a notice of proposed summary disposition proposing to reverse and remand. In response to our proposed disposition, the State filed a notice that it concurred with our proposed disposition and did not intend to file a memorandum in opposition. Therefore, in the absence of opposition from either party and for the reasons outlined in

our notice of proposed disposition, we reverse Defendant's conviction and remand for further proceedings.

{2} IT IS SO ORDERED.

KRISTINA BOGARDUS, Judge

WE CONCUR:

JENNIFER L. ATTREP, Judge

MEGAN P. DUFFY, Judge