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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Filing Date: November 12, 2020

No. S-1-SC-37199

STATE OF NEW MEXICO,

Plaintiff-Respondent,

v.

JOHN D. MCDOWELL,

Defendant-Petitioner.

**ORIGINAL PROCEEDING ON CERTIORARI
Matthew E. Chandler, District Judge**

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Santa Fe, NM
John J. Woykovsky, Assistant Attorney General
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for Respondent

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Allison H. Jaramillo, Assistant Appellate Defender
Santa Fe, NM

for Petitioner

DISPOSITIONAL ORDER OF REVERSAL

{1} WHEREAS, this matter came on for consideration by the Court upon petition for writ of certiorari filed pursuant to Rule 12-502 NMRA, and the Court having considered said petition and being sufficiently advised, issued its writ of certiorari on September 28, 2018;

{2} WHEREAS, no briefing was ordered and the case was held in abeyance pending this Court's disposition in *State v. Montaña*, No. S-1-SC-37021, and *State v. Martinez*, No. S-1-SC-37098;

{3} WHEREAS, this Court issued an opinion in *State v. Montaña*, 2020-NMSC-009, 468 P.3d 838, on June 11, 2020;

{4} WHEREAS, the Court finding that the issue of law presented in this case was decided by the Court's disposition in *Montaña*, *id.*; and

{5} WHEREAS, the Court exercising its discretion under Rule 12-405(B)(1) and (2) NMRA to dispose of a case by non-precedential order rather than a formal opinion;

{6} NOW, THEREFORE, IT IS ORDERED that the decision of the Court of Appeals is reversed and this matter is remanded to vacate Petitioner's conviction under NMSA 1978, Section 30-22-1.1 (2003).

{7} **IT IS SO ORDERED.**

BARBARA J. VIGIL, Justice

C. SHANNON BACON, Justice

DAVID K. THOMSON, Justice

NAKAMURA, Justice (dissenting).

{8} For the reasons set forth in my dissenting opinion in *Montano*, 2020-NMSC-009, ¶¶ 69-88, I respectfully dissent.

JUDITH K. NAKAMURA, Justice