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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Filing Date: March 25, 2024

No. S-1-SC-39134

STATE OF NEW MEXICO,

Plaintiff-Petitioner,

v.

JOHN BRANHAM,

Defendant-Respondent.

**ORIGINAL PROCEEDING ON CERTIORARI
Fred Van Soelen, District Judge**

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

for Petitioner

Bennett J. Baur, Chief Public Defender
Kimberly Chavez Cook, Appellate Defender
Santa Fe, NM

for Respondent

DISPOSITIONAL ORDER OF REVERSAL

THOMSON, Justice.

{1} WHEREAS, the Court granted the State's petition for writ of certiorari to review the Court of Appeals' memorandum opinion, *State v. Branham*, No. A-1-CA-39502, mem. op. (N.M. Ct. App. Nov. 18, 2021) (nonprecedential), which relied on *State v. Sena*, 2021-NMCA-047, 495 P.3d 1163, in reversing the district court and holding that Defendant, John Branham, having been convicted of Child Solicitation by Electronic Device (CES) contrary to NMSA 1978, Section 30-37-3.2(A) (2007), was subject to the

general period of parole under NMSA 1978, Section 31-21-10(D) (2009), rather than the extended parole period under the sex offender parole statute, NMSA 1978, Section 31-21-10.1(A) (2007) (requiring the imposition of an indeterminate period of parole of either five to twenty years or five years to life for those convicted of certain sex offenses), see *Branham*, No. A-1-CA-39502, mem. op. ¶¶ 1-3; *id.*, Notice, Proposed Summary Disposition (Sept. 9, 2021);

{2} WHEREAS, this Court subsequently ordered these proceedings held in abeyance pending its disposition of *State v. Sena*, S-1-SC-38713;

{3} WHEREAS, this Court issued an opinion in *State v. Sena*, holding that defendants convicted of CES are subject to an indeterminate parole sentence of five to twenty years under the sex offender parole statute, see *id.*, 2023-NMSC-007, ¶¶ 3-4, 25, 528 P.3d 631;

{4} WHEREAS, herein the Court concludes that the issue of law presented in this case was addressed by this Court's opinion in *Sena*, *id.*;

{5} WHEREAS, the Court exercises its discretion under Rule 12-405(B)(1) NMRA to dispose of this case by nonprecedential order rather than a formal opinion;

{6} WHEREAS, the Court having considered the foregoing and being otherwise sufficiently advised;

{7} NOW, THEREFORE, IT IS ORDERED that the Court's January 31, 2022, order in this matter is VACATED as to the abeyance; and

{8} IT IS FURTHER ORDERED that the memorandum opinion of the Court of Appeals is REVERSED, and this matter is REMANDED to the district court for further proceedings, including the amendment of Defendant's parole sentence, in accordance with *Sena*, 2023-NMSC-007.

{9} IT IS SO ORDERED.

DAVID K. THOMSON, Justice

WE CONCUR:

C. SHANNON BACON, Chief Justice

MICHAEL E. VIGIL, Justice

BRIANA H. ZAMORA, Justice