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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

NO. 33,773

5 **BENJAMIN MONTOYA,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**

8 **Briana H. Zamora, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 Steven H. Johnston, Assistant Attorney General

12 Albuquerque, NM

13 for Appellee

14 Bennett J. Baur, Chief Public Defender

15 J. K. Theodosia Johnson, Assistant Appellate Defender

16 Santa Fe, NM

17 for Appellant

18 **MEMORANDUM OPINION**

19 **BUSTAMANTE, Judge.**

1 {1} This is Defendant’s second appeal in this case. The details of his trial are
2 contained in the Supreme Court’s opinion in his first appeal and need not be repeated.
3 *See State v. Montoya*, 2013-NMSC-020, 306 P.3d 426. The Supreme Court vacated
4 Defendant’s conviction for felony murder and remanded for entry of an amended
5 sentence reflecting only his conviction for shooting at a motor vehicle. *Id.* ¶¶ 56, 65.
6 On remand the district court imposed a sentence of fifteen years for a second degree
7 felony resulting in the death of a human being for the offense of shooting at a motor
8 vehicle resulting in great bodily harm (death). The district court suspended two years
9 “on condition of probation and parole.”

10 {2} Defendant now appeals arguing that sentencing him under NMSA 1978,
11 Section 31-18-15(A)(4) (2007, amended 2016) for his conviction under NMSA 1978,
12 Section 30-3-8(B) (1993) constitutes double jeopardy. This is the same argument we
13 rejected in *State v. Franco*, 2016-NMCA-___, ¶¶ 17-34, ___ P.3d ___ (No. 33,392, June
14 14, 2016. For the reasons noted in *Franco*, we reject it here.

15 {3} Defendant’s sentence is affirmed.

16 {4} **IT IS SO ORDERED.**

17
18

MICHAEL D. BUSTAMANTE, Judge

1 **WE CONCUR:**

2

3 **MICHAEL E. VIGIL, Chief Judge**

4

5 **JONATHAN B. SUTIN, Judge**