

1 (DWI), fifth offense, [RP 157] following his entry of a guilty plea. [RP 110] In this
2 Court's notice of proposed disposition, we proposed to conclude Defendant did not
3 demonstrate the invalidity of his prior DWI convictions and to affirm his conviction
4 for DWI, fifth offense. [CN 1, 5] Defendant filed a memorandum in opposition, which
5 we have given due consideration. Remaining unpersuaded, we affirm.

6 {2} Defendant continues to challenge the validity of his conviction and has also
7 moved this Court to amend his docketing statement pursuant to Rule 12-208(E)
8 NMRA to add an argument that three of his prior convictions for DWI cannot be used
9 for enhancement purposes, because the waiver of counsel forms lack a
10 countersignature of the public defender. [MIO 1] The essential requirements to show
11 good cause for our allowance of an amendment to an appellant's docketing statement
12 are: (1) that the motion be timely, (2) that the new issue sought to be raised was either
13 (a) properly preserved below or (b) allowed to be raised for the first time on appeal,
14 and (3) that the issues raised are viable. *See State v. Moore*, 1989-NMCA-073, ¶ 42,
15 109 N.M. 119, 782 P.2d 91, *overruled on other grounds by State v. Salgado*,
16 1991-NMCA-044, 112 N.M. 537, 817 P.2d 730. For the reasons that follow, we deny
17 Defendant's motion to amend the docketing statement on the ground that the issue
18 raised is not viable.

1 {3} Defendant asserts the waivers of counsel are invalid, because NMSA 1978,
2 Section 31-15-12(E) (1993) requires that “[t]he waiver shall be in writing and
3 countersigned by a district public defender.” [MIO 1] However, as Defendant also
4 acknowledges, this Court has previously held the lack of a countersignature by the
5 public defender does not render a waiver of counsel invalid for purposes of enhancing
6 later convictions. *See State v. Pino*, 1997-NMCA-001, ¶ 16, 122 N.M. 789, 932 P.2d
7 13. [MIO 2] Defendant concedes *Pino* is controlling law but asks this Court to “re-
8 examine” its decision. Defendant asserts “[t]he issue of public defender
9 countersignatures is a prominent issue” [MIO 2] but does not pose a compelling
10 reason for this Court to overrule *Pino*. While we agree that compliance with the
11 countersignature requirement furthers the objective of placing on the record the
12 elements supporting the constitutional validity of a guilty plea, “[a] defendant may not
13 raise every conceivable error that may have led to the prior conviction, but is limited
14 to those errors that would form the basis of a legitimate collateral attack, i.e., those
15 errors” that result in the denial of a substantively fair trial or fundamental error. *Pino*,
16 1997-NMCA-011, ¶¶ 14-15. Consequently, we conclude the issue of lack of the public
17 defender’s countersignature is non-viable and deny Defendant’s motion to amend.

18 {4} This Court’s proposed disposition stated that where a defendant seeks to
19 collaterally attack a prior conviction on the basis that the plea was not made

1 voluntarily, knowingly, and intelligently, “it [is d]efendant’s burden to produce
2 evidence demonstrating the invalidity of those convictions, not the [s]tate’s burden to
3 prove their validity.” *State v. Pacheco*, 2008-NMCA-059, ¶ 8, 144 N.M. 61, 183 P.3d
4 946. [CN 3] Defendant must demonstrate any alleged procedural and constitutional
5 deficiencies in his prior convictions amounted to fundamental error. *See id.* ¶ 9
6 (holding that in order to meet her burden, the defendant was required to prove alleged
7 procedural and constitutional deficiencies associated with prior DWI convictions
8 amounted to fundamental error). Because Defendant relies in his memorandum in
9 opposition on the lack of countersignature by the public defender and does not
10 demonstrate how any deficiencies in his prior convictions amounted to fundamental
11 error, we conclude the district court appropriately enhanced Defendant’s sentence.

12 {5} Therefore, for the reasons stated above and in this Court’s proposed disposition,
13 we affirm.

14 {6} **IT IS SO ORDERED.**

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M. MONICA ZAMORA, Judge

17 **WE CONCUR:**

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RODERICK T. KENNEDY, Judge

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2 **TIMOTHY L. GARCIA, Judge**