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## IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

## 2 **STATE OF NEW MEXICO**,

Plaintiff-Appellee,

4 **v.** 

1

3

No. 34,902

## 5 JAMEY RONALD HEAD,

6 Defendant-Appellant.

## 7 APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY 8 Sandra A. Price, District Judge

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 Jacqueline R. Medina, Assistant Attorney General

12 Albuquerque, NM

13 for Appellee

14 Bennett J. Baur, Acting Chief Public Defender

15 Sergio Viscoli, Director

16 Santa Fe, NM

17 for Appellant

18 MEMORANDUM OPINION

19 BUSTAMANTE, Judge.

{1} Defendant appeals from the district court's ruling that his magistrate court
 suspended sentence with probation was tolled during the time that Defendant was a
 fugitive, such that his probation term did not expire for purposes of giving the
 magistrate court the authority to revoke his probation. [RP 96] Our notice proposed
 to reverse, and the State filed a memorandum in opposition. Unpersuaded by the
 State's arguments, we reverse.

7 As discussed in our notice, the outcome of this case is controlled by State v. **{2}** 8 Begay, \_\_\_-NMCA-\_\_\_, ¶¶ 1, 6, \_\_\_ P.3d \_\_\_ (No. 33,588, Jan. 13, 2016), cert. granted Mar. 25, 2016, which holds that the tolling provision of NMSA 1978, Section 9 10 31-21-15(C) (2013), applies only to cases in which a defendant's underlying conviction occurred in district court, as opposed to persons convicted by magistrates. 11 Here, Defendant was convicted in magistrate court and his probation term had expired 12 when he was finally located to answer for his probation violation. [DS 2] Given this, 13 we rely on Begay and hold that Defendant had satisfied his criminal liability and that 14 the magistrate court thus lacked authority to impose any further sentence. See, e.g., 15 16 State v. Godkin, 2015-NMCA-114, ¶¶ 1, 15-16, 362 P.3d 161 (recognizing that a defendant cannot waive the expiration of the district court's jurisdiction, and that the 17 18 court loses jurisdiction over the case whenever the period for which the sentence was 19 suspended expires without being revoked). We accordingly reverse.

1	[3] Lastly, we acknowledge the State's arguments that <i>Begay</i> was wrongly decided
2	[MIO 4-11], as well as its request that we hold this case in abeyance pending the
3	outcome of the certiorari proceedings in Begay. [MIO 1] We decline to revisit Begay,
4	however, and further deny the State's request to hold this case in abeyance. See
5	generally State v. Jones, 2010-NMSC-012, ¶ 59, 148 N.M. 1, 229 P.3d 474 (noting
6	that, in the absence of law to the contrary, a decision from the Court of Appeals is
7	"controlling" even when certiorari has been granted by the Supreme Court).
8	{4} For the reasons discussed above and in our notice, we reverse.
9	<b>{5} IT IS SO ORDERED.</b>
10	
10 11	MICHAEL D. BUSTAMANTE, Judge
12	WE CONCUR:
13 14	LINDA M. VANZI, Judge
15	
16	J. MILES HANISEE, Judge