

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

7 {2} As discussed in our notice, the outcome of this case is controlled by *State v.*
8 *Begay*, ___-NMCA-___, ¶¶ 1, 6, ___ P.3d ___ (No. 33,588, Jan. 13, 2016), *cert.*
9 *granted* Mar. 25, 2016, which holds that the tolling provision of NMSA 1978, Section
10 31-21-15(C) (2013), applies only to cases in which a defendant’s underlying
11 conviction occurred in district court, as opposed to persons convicted by magistrates.
12 Here, Defendant was convicted in magistrate court and his probation term had expired
13 when he was finally located to answer for his probation violation. [DS 2] Given this,
14 we rely on *Begay* and hold that Defendant had satisfied his criminal liability and that
15 the magistrate court thus lacked authority to impose any further sentence. *See, e.g.,*
16 *State v. Godkin*, 2015-NMCA-114, ¶¶ 1, 15-16, 362 P.3d 161 (recognizing that a
17 defendant cannot waive the expiration of the district court’s jurisdiction, and that the
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 *Begay* 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 {5} **IT IS SO ORDERED.**

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11 **MICHAEL D. BUSTAMANTE, Judge**

12 **WE CONCUR:**

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14 **LINDA M. VANZI, Judge**

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16 **J. MILES HANISEE, Judge**