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

2 **STATE OF NEW MEXICO,**

3 **Plaintiff-Appellant,**

4 **v.**

No. 34,954

5 **SIMON PETER GONZALES,**

6 **Defendant-Appellee.**

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

8 **Cristina T. Jaramillo, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 Steven Johnston, Assistant Attorney General

12 Albuquerque, NM

13 for Appellant

14 Bennett J. Baur, Chief Public Defender

15 Sergio Viscoli, Appellate Defender

16 David Henderson, Assistant Appellate Defender

17 Santa Fe, NM

18 for Appellee

19 **MEMORANDUM OPINION**

20 **HANISEE Judge.**

1 {1} The State appeals from the district court’s order dismissing the case without
2 prejudice. This Court issued a second notice of proposed disposition, proposing
3 summary reversal and remand. Defendant filed a memorandum in partial opposition,
4 in which Defendant “concur[s] with the Court’s proposed ruling” and only “seeks
5 clarification [on] the proposed remedy.” [MIO 1] Accordingly, for the reasons set
6 forth in our notice of proposed disposition, we reverse the district court’s order
7 dismissing the case and remand with instructions to the district court to afford the
8 State a fair opportunity to respond to Defendant’s motion to dismiss before ruling on
9 the motion.

10 {2} **IT IS SO ORDERED.**

11 _____
12 **J. MILES HANISEE, Judge**

13 **WE CONCUR:**

14 _____
15 **TIMOTHY L. GARCIA, Judge**

16 _____
17 **M. MONICA ZAMORA, Judge**