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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. 35,137

5 **JAMES WILSON,**

6 Defendant-Appellant.

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

8 **Gary L. Clingman, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 James Wilson

13 Santa Fe, NM

14 Pro Se Appellant

15 **MEMORANDUM OPINION**

16 **SUTIN, Judge.**

17 {1} Defendant James Wilson appeals from the alleged automatic denial of his

18 motion to vacate his probation violation and his petition to amend order revoking

1 probation and imposing judgment and sentence. This Court issued a calendar notice
2 proposing to dismiss Defendant's appeal for lack of a final order on the basis that
3 Defendant's motions are not subject to automatic denial and are therefore still
4 outstanding.

5 {2} In this Court's notice of proposed disposition, we pointed out that, generally,
6 a criminal action may only be appealed to this Court upon the entry of a final
7 judgment. *See* NMSA 1978, § 39-3-3(A)(1) (1972). We further noted that an appellate
8 court does not generally have jurisdiction where a final judgment has not been
9 entered, *see, e.g., State v. Griego*, 2004-NMCA-107, ¶ 22, 136 N.M. 272, 96 P.3d
10 1192, and that, in the absence of jurisdiction, we must dismiss. *See Thornton v.*
11 *Gamble*, 1984-NMCA-093, ¶ 15, 101 N.M. 764, 688 P.2d 1268.

12 {3} To the extent Defendant asserted that his motions were automatically denied,
13 we noted that case law from this Court and our Supreme Court indicates that, absent
14 an explicit automatic denial provision, post-judgment motions are not generally
15 deemed denied by the passage of time. *See Albuquerque Redi-Mix, Inc. v. Scottsdale*
16 *Ins. Co.*, 2007-NMSC-051, ¶¶ 9-12, 142 N.M. 527, 168 P.3d 99; *see also State v.*
17 *Romero*, 2014-NMCA-063, ¶ 7, 327 P.3d 525. We noted that Defendant had not
18 directed this Court to any such authority. *See Curry v. Great Nw. Ins. Co.*, 2014-

1 NMCA-031, ¶ 28, 320 P.3d 482 (“Where a party cites no authority to support an
2 argument, we may assume no such authority exists.”).

3 {4} Defendant filed a response to this Court’s notice of proposed disposition.
4 Defendant has not, however, provided this Court with authority establishing that a
5 final order exists in this case. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124
6 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly held that, in summary calendar
7 cases, the burden is on the party opposing the proposed disposition to clearly point out
8 errors in fact or law.”). As a result, this Court has no choice but to dismiss for lack of
9 jurisdiction. To the extent Defendant points out that we have not addressed the merits
10 of his appeal, we note that, in the absence of jurisdiction, this Court remains unable
11 to do so.

12 {5} **IT IS SO ORDERED.**

13 _____
14 **JONATHAN B. SUTIN, Judge**

15 **WE CONCUR:**

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

1 **J. MILES HANISEE, Judge**