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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. 35,167**

5       **ERVEY RODRIGUEZ,**

6             Defendant-Appellant.

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

8       **Lisa B. Riley, District Judge**

9       Hector H. Balderas, Attorney General

10       Santa Fe, NM

11       M. Anne Kelly, Assistant Attorney General

12       Albuquerque, NM

13       for Appellee

14       Bennett J. Baur, Chief Public Defender

15       Becca Salwin, Assistant Appellate Defender

16       Santa Fe, NM

17       for Appellant

18                                       **MEMORANDUM OPINION**

19       **SUTIN, Judge.**

1 {1} Defendant has appealed from a number of convictions. We recently issued a  
2 second notice of proposed summary disposition in which we proposed to affirm in  
3 part and reverse in part. Specifically, we proposed to reject Defendant's challenge to  
4 the sufficiency of the evidence, but proposed to vacate the sentence and remand for  
5 a new sentencing hearing. Defendant has filed a response that confirms his reliance  
6 upon the arguments set forth in his first memorandum in opposition. The State has  
7 filed a response indicating that it does not oppose our proposed summary disposition.

8 {2} Accordingly, for the reasons previously stated, we affirm Defendant's  
9 convictions, but vacate the sentence and remand for further proceedings.

10 {3} **IT IS SO ORDERED.**

11 \_\_\_\_\_  
12 **JONATHAN B. SUTIN, Judge**

13 **WE CONCUR:**

14 \_\_\_\_\_  
15 **JAMES J. WECHSLER, Judge**

16 \_\_\_\_\_  
17 **M. MONICA ZAMORA, Judge**