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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. 35,188

5 **JEFFREY BLAND,**

6 Defendant-Appellant.

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

8 **James Waylon Counts, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Todd B. Hotchkiss, Attorney at Law, LLC

13 Todd B. Hotchkiss

14 Albuquerque, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **SUTIN, Judge.**

1 {1} Defendant appeals from the district court’s judgment, sentence, and order
2 partially suspending sentence, entered following his plea of no contest to two counts
3 of fraud (over \$20,000), a second degree felony, and two counts of securities fraud,
4 a third degree felony. This Court issued a calendar notice proposing summary
5 affirmance. Defendant filed a memorandum in opposition to this Court’s notice of
6 proposed disposition that we have duly considered. Unpersuaded, we affirm.

7 {2} Defendant contends that the district court erred by not considering mitigating
8 evidence prior to sentencing. [DS 20-22; MIO 10] Specifically, Defendant contends
9 that the district court abused its discretion when it did not read or consider thirty-eight
10 of the forty letters submitted by Defendant to the court in advance of his sentencing
11 hearing. [DS 6, 20; MIO 10]

12 {3} As a prefatory matter, we note that a party responding to a proposed disposition
13 of this Court must point out specific errors in fact or law. *See Hennessy v. Duryea*,
14 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly
15 held that, in summary calendar cases, the burden is on the party opposing the proposed
16 disposition to clearly point out errors in fact or law.”). In response to this Court’s
17 calendar notice, defense counsel has restated the facts and proceedings that were
18 already presented to this Court in Defendant’s docketing statement. [MIO 1-9; DS 2-
19 19] The facts included in the memorandum in opposition do not appear to include any

1 new information as compared with the facts and proceedings described in Defendant’s
2 docketing statement, and counsel has not pointed out whether any of the facts asserted
3 are contrary to those relied on by this Court in our notice of proposed disposition. We
4 remind counsel that the repetition of material that has already been presented to the
5 Court, with no indication as to which parts, if any, contradict the facts relied upon by
6 the district court or this Court or which parts, if any, are responsive to the notice of
7 proposed disposition, is unnecessary and creates additional work for both this Court
8 and the parties. We request that counsel refrain from this practice in any future
9 pleadings he may file with this Court.

10 {4} With respect to Defendant’s issue on appeal—that the district court abused its
11 sentencing discretion when it did not read thirty-eight letters submitted by
12 Defendant—we recognized in our notice of proposed disposition that NMSA 1978,
13 Section 31-18-15.1(A) (2009), requires that “[t]he court shall hold a sentencing
14 hearing to determine if mitigating or aggravating circumstances exist and take
15 *whatever evidence or statements it deems will aid it in reaching a decision to alter a*
16 *basic sentence.*” (Emphasis added.) [CN 4-5] We then noted that it appeared the
17 district court held a two-and-a-half-hour sentencing hearing, at which time it took into
18 consideration: (1) Defendant’s sentencing memorandum, which provided background
19 on Defendant, outlined his health issues, summarized the thirty-eight letters from his

1 friends and family as “prais[ing Defendant’s] character as a selfless, honorable, eager
2 to assist man who has dedicated his life to the service of others” and stated that “each
3 of the letter writers discuss[es] their strong admiration, respect, and love for
4 [Defendant] as they are each discussing the individual ways in which [Defendant] has
5 helped each of them, personally and significantly” [CN 3-4]; (2) argument of defense
6 counsel, directed at showing the district court that Defendant “is of high moral
7 character[,]” a religious man, with the love of highly educated people, as well as
8 directed at highlighting Defendant’s medical issues and Defendant’s desire and efforts
9 to pay the victim back [CN 4]; and (3) testimony by Defendant and his wife. [CN 4]
10 We also observed in our calendar notice that it appeared that defense counsel touched
11 on some of the letters specifically during his argument, describing for the district court
12 the contents of a letter from Defendant’s pastor and letters from Dr. Randy Lee,
13 Patricia Hodgins, and Kent Mikkelsen. [CN 4]

14 {5} Defendant continues to argue that—despite the mitigation evidence presented
15 to the district court through the sentencing memorandum, argument of counsel, and
16 Defendant’s allocution—the district court did not fulfill its duty to consider mitigating
17 evidence. [MIO 17] *See State v. Sotelo*, 2013-NMCA-028, ¶ 45, 296 P.3d 1232
18 (holding that the district court has an obligation to consider mitigating factors in
19 sentencing). In essence, Defendant claims that the district court’s failure to read each

1 and every letter submitted by him equates to a failure to consider mitigating
2 circumstances. [MIO 17] Notably, however, Defendant does not address in his
3 memorandum in opposition the distinction we observed in our calendar notice
4 between the present case and *Sotelo*, a case in which the court did not consider any
5 mitigation evidence whatsoever. [CN 3] Furthermore, we also note that Defendant has
6 not provided us with authority to support his position. Where a party cites no authority
7 to support an argument, the appellate courts may assume no such authority exists. *In*
8 *re Adoption of Doe*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329.

9 {6} Instead, in his memorandum in opposition, Defendant relies in large part on due
10 process and generalized notions of fairness to support his contention that the district
11 court was obligated to read each and every letter submitted by him prior to imposing
12 sentence. [See generally MIO 14-22] At the outset, we agree with Defendant that “the
13 discretion of the sentencing judge in New Mexico has always been subject to the
14 requirements of due process.” [MIO 15 (quoting *State v. Montoya*, 1978-NMCA-009,
15 ¶ 7, 91 N.M. 425, 575 P.2d 609)] However, we are not convinced that the district
16 court’s sentencing in this case was unfair to Defendant or otherwise violated due
17 process. See *State v. Wildgrube*, 2003-NMCA-108, ¶¶ 39, 41, 134 N.M. 262, 75 P.3d
18 862 (stating that due process at sentencing requires notice and a meaningful
19 opportunity to be heard). As we have noted in our calendar notice and throughout this

1 Opinion, Defendant was given a two-and-a-half-hour sentencing hearing at which he
2 had the opportunity to speak to the district court on the issue of his sentencing; the
3 district court read and considered Defendant's sentencing memorandum containing
4 mitigating circumstances such as his health, his character, and his desire and efforts
5 to make the victim whole; the district court read and considered letters from
6 Defendant and his wife; the district court heard and considered the testimony of
7 Defendant's wife; and defense counsel had the opportunity to make a sentencing
8 argument, and took advantage of that opportunity throughout the two-and-a-half-hour
9 hearing; and finally, the basic substance of the thirty-eight unread letters was
10 presented to the district court through the sentencing memorandum and argument of
11 counsel. In light of the foregoing, we are equally unpersuaded that Defendant has
12 demonstrated that he was prejudiced by the district court's failure to read each and
13 every letter. *See State v. Gardner*, 2003-NMCA-107, ¶ 42, 134 N.M. 294, 76 P.3d 47
14 (holding that a defendant's sentence will not be overturned for a claimed due process
15 violation unless the defendant demonstrates that he or she was prejudiced by the
16 procedure employed by the sentencing court).

17 {7} We are similarly not convinced by the out-of-jurisdiction case law cited in
18 Defendant's memorandum in opposition. [*See generally* MIO 18-22] We note that the
19 cases cited are inapposite to the issue in the present case, in that those cases dealt with

1 situations wherein the lower court was not aware of even the substance of the letters
2 at issue, and in fact, in some of the cases the letters had not yet been collected by the
3 defense. Hence, we are not persuaded by those cases that the district court erred in the
4 present case. *See Fernandez v. Farmers Ins. Co. of Ariz.*, 1993-NMSC-035, ¶ 15, 115
5 N.M. 622, 857 P.2d 22 (“[C]ases are not authority for propositions not considered.”
6 (internal quotation marks and citation omitted)).

7 {8} To the extent that Defendant is arguing in his memorandum in opposition that
8 a comment by the district judge during Defendant’s sentencing hearing that his father
9 “never recovered from losing his retirement savings in the stock market” should be
10 a factor to consider in determining the fairness of the sentencing proceeding in light
11 of the fact that the court did not read the thirty-eight letters [MIO 22-23]—a point not
12 raised in Defendant’s docketing statement—we note that aside from an inapposite out-
13 of-jurisdiction case, Defendant has provided this Court with no authority to support
14 his position that the district court’s single statement provides a basis for reversal on
15 abuse of discretion grounds. Therefore, we are not persuaded by Defendant’s
16 contention. *See In re Adoption of Doe*, 1984-NMSC-024, ¶ 2 (stating that where a
17 party cites no authority to support an argument, the appellate courts may assume no
18 such authority exists).

1 {9} Finally, as we noted in our calendar notice, although Defendant was ultimately
2 sentenced to three years of incarceration, as opposed to the fully probated sentence he
3 requested, “there is no abuse of discretion when mitigating circumstances are
4 considered and rejected.” [CN 5] *Sotelo*, 2013-NMCA-028, ¶45. Consequently, under
5 the circumstances of this case, we are not convinced that the district court abused its
6 sentencing discretion by failing to read each and every letter submitted by Defendant.

7 {10} Therefore, for the reasons stated in this Opinion, as well as those provided in
8 our calendar notice, we affirm.

9 {11} **IT IS SO ORDERED.**

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11

 JONATHAN B. SUTIN, Judge

12 **WE CONCUR:**

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14

 TIMOTHY L. GARCIA, Judge

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16

 M. MONICA ZAMORA, Judge