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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. A-1-CA-36744

5 **JESSE JAMES LESTER III,**

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 Anita Carlson, Assistant Attorney General
11 Santa Fe, NM

12 for Appellee

13 Bennet J. Baur, Chief Public Defender
14 Santa Fe, NM
15 Brendan D. Hicks, Assistant Public Defender
16 Carlsbad, NM

17 for Appellant

18 **MEMORANDUM OPINION**

19 **VIGIL, Judge.**

1 {1} Defendant Jesse James Lester III sought interlocutory review of the district
2 court's denial of his motion to dismiss. This Court granted Defendant's application
3 for interlocutory review and entered a notice of proposed summary disposition,
4 proposing to reverse. The State has filed a memorandum in opposition (MIO) to our
5 notice. Having considered the State's MIO and relevant authority, we reverse.

6 {2} In his application for interlocutory review, Defendant challenged the denial of
7 his motion to dismiss, which was premised on the failure to meet the applicable time
8 limitations for the offenses set forth in the criminal complaint. Our notice set forth the
9 relevant facts and the law that we believed controlled. In response, the State
10 essentially concedes that we have authority on point supporting reversal in this case.
11 [MIO 4-6] Nonetheless, the State suggests that *State v. Trevizo*, 2011-NMCA-069,
12 150 N.M. 158, 257 P.3d, should be distinguished [MIO 7] or that this Court should
13 reconsider the case. [MIO 6, 10] For the reasons that follow, we see no material basis
14 to distinguish *Trevizo* and decline to revisit our holding in that case.

15 {3} As the State points out, this Court's decision in *Trevizo* was based, in large part,
16 on our Supreme Court's interpretation of NMSA 1978, Section 30-1-8 (2009) in
17 *Robinson v. Short*, 1979-NMSC-099, 93 N.M. 610, 603 P.2d 720. [MIO 4-6] The
18 State asks this Court to reconsider *Trevizo* on the basis that *Robinson* was "repudiated
19 by the legislature's amendment of Section 30-1-8" soon after *Robinson* was decided.

1 [MIO 6] This Court addressed that argument in *Trevizo*. We pointed out that although
2 the Legislature amended the statute to change the statute of limitations with respect
3 to NMSA 1978, Section 51-1-38 (2013)—the statute at issue in *Robinson*—“it chose
4 not to alter the language in Section 30-1-8(G) interpreted by our Supreme Court.”
5 *Trevizo*, 2011-NMCA-069, ¶ 10. Accordingly, we concluded that the amendment did
6 not abrogate our Supreme Court’s interpretation of Section 30-1-8(G) in *Robinson*.
7 *Trevizo*, 2011-NMCA-069, ¶ 10. There is nothing in the information before the Court
8 that leads us to conclude that our assessment of *Robinson* was incorrect. Therefore,
9 we decline the State’s invitation to revisit our decision in *Trevizo*.

10 {4} Further, insofar as the State suggests that *Trevizo* should be distinguished, we
11 are not persuaded. [MIO 7] According to the State, Game and Fish regulations “set
12 out a comprehensive scheme of penalties, including provisions for fines and
13 incarceration that are not consistent with those in the Criminal Code for a
14 misdemeanor and petty misdemeanor.” [MIO 7] We disagree. The potential periods
15 of incarceration for violations of Game and Fish regulations are, in fact, consistent
16 with those set forth in the Criminal Code for misdemeanor and petty misdemeanor
17 offenses. *Compare* NMSA 1978, § 17-2-10 (2017), *with* NMSA 1978, § 31-19-1
18 (1984). The potential fines, however, are more punitive than those set forth in the
19 Criminal Code. *Id.* Nonetheless, we do not believe that this difference is enough to

1 distinguish this case from *Trevizo* or to conclude that *Robinson* is not controlling
2 authority.

3 {5} Lastly, to the extent that the State asserts this case merits a different result
4 because *Trevizo* “did not address the argument that *Robinson*’s analysis impermissibly
5 rendered Section 30-1-8(H) entirely superfluous,” [MIO 7] we acknowledge the
6 potential merit of that argument, but our ability to entertain such an argument is
7 limited since we are “bound by Supreme Court precedent.” *State v. Wilson*, 1994-
8 NMSC-009, ¶ 6, 116 N.M. 793, 867 P.2d 1175. Accordingly, we are not in a position
9 to question our Supreme Court’s interpretation of Section 30-1-8 and suggest that the
10 State seek further review if it believes that *Robinson* should be reconsidered.

11 {6} Accordingly, for the reasons set forth in our notice of proposed summary
12 disposition and in this opinion, we reverse the district court’s denial of Defendant’s
13 motion to dismiss.

14 {7} **IT IS SO ORDERED.**

15 _____
16 **MICHAEL E. VIGIL, Judge**

17 **WE CONCUR:**

18 _____
19 **HENRY M. BOHNHOFF, Judge**

1

2 **EMIL J. KIEHNE, Judge**