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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. 32,465**

5           **MIKKO T. SEKIYA,**

6                     Defendant-Appellant.

7           Gary K. King, Attorney General  
8           Santa Fe, NM

9           for Appellee

10          Mikko T. Sekiya  
11          Carrizozo, NM

12          Pro Se Appellant

13   **MEMORANDUM OPINION**

14          **FRY, Judge.**

15                 Defendant-Appellant Mikko T. Sekiya (Defendant) seeks to appeal from the  
16                 revocation of his probation. We issued a calendar notice on December 6, 2012,  
17                 proposing to dismiss. Defendant has filed a memorandum in opposition. After due  
18                 consideration, we remain unpersuaded. We therefore dismiss.

1 **BACKGROUND**

2 As we previously observed at greater length in the notice of proposed summary  
3 disposition, a timely notice of appeal was not filed below. Defendant’s admission to  
4 the allegations contained in the petition to revoke his probation is also significant,  
5 both insofar as it operates as a waiver of the right to appeal, and insofar as it  
6 eliminates any presumption of ineffective assistance that might otherwise apply in  
7 relation to the failure to timely file a notice of appeal. See *State v. Hodge*, 118 N.M.  
8 410, 414, 882 P.2d 1, 5 (1994) (holding that ordinarily, a guilty or no contest plea  
9 waives a defendant’s right to appeal on non-jurisdictional grounds); *State v. Leyba*,  
10 2009-NMCA-030, ¶¶ 14, 17, 145 N.M. 712, 204 P.3d 37 (applying *Hodge* in relation  
11 to an admitted probation violation); *State v. Peppers*, 110 N.M. 393, 399, 796 P.2d  
12 614, 620 (Ct. App. 1990) (declining to extend the *Duran* presumption of  
13 ineffectiveness of counsel to include appeals from pleas of guilty or no contest).

14 **DISCUSSION**

15 In his memorandum in opposition Defendant notes that he received an  
16 extension of time to file his docketing statement with this Court. [MIO 30] However,  
17 such an extension does not alter or diminish the necessity for compliance with the  
18 requirements associated with the filing of notice of appeal. Nor does it have any  
19 impact on Defendant’s apparent waiver of the right to appeal.

1 In his memorandum in opposition, Defendant further asserts that he was not  
2 informed about the filing requirements or his entitlement to appeal. [MIO 1]  
3 However, this does not alter our assessment that the instant appeal is not properly  
4 before us. Relatedly, we note that Defendant has recently filed a “Motion for Post  
5 Conviction Relief,” in which he suggests that he received ineffective assistance of  
6 counsel. However, as previously stated, the presumption of ineffective assistance  
7 does not apply with respect to the failure to file notice of appeal in this case. To the  
8 extent that Defendant may believe counsel was deficient in some other way, habeas  
9 proceedings would appear to supply the only appropriate avenue of redress. *See*  
10 *generally State v. Baca*, 1997-NMSC-059, ¶ 25, 124 N.M. 333, 950 P.2d 776 (“A  
11 record on appeal that provides a basis for remanding to the [district] court for an  
12 evidentiary hearing on ineffective assistance of counsel is rare. Ordinarily, such claims  
13 are heard on petition for writ of habeas corpus.”).

14 **CONCLUSION**

15 Accordingly, for the reasons stated above and in our notice of proposed  
16 summary disposition, we conclude that this instant appeal is not properly before us.  
17 We therefore dismiss.

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**IT IS SO ORDERED.**

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**CYNTHIA A. FRY, Judge**

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**WE CONCUR:**

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**JAMES J. WECHSLER, Judge**

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**TIMOTHY L. GARCIA, Judge**