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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. 33,203

5 **THOMAS RAMIREZ,**

6 Defendant-Appellant.

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

8 **Abigail Aragon, District Judge**

9 Gary K. King, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Jorge A. Alvarado, Acting Chief Public Defender

13 Karl Erich Martell, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **VIGIL, Judge.**

1 {1} Defendant Thomas Ramirez appeals his sentence, which was imposed after his
2 probation was revoked. In our notice of proposed summary disposition, we proposed
3 to affirm. In response to this Court’s notice, Ramirez has filed a memorandum in
4 opposition, which we have duly considered. As we do not find Defendant’s arguments
5 persuasive, we affirm.

6 {2} Ramirez argues that the district court erred in using a conditional discharge for
7 the offense of possession of heroin entered pursuant to the Controlled Substances Act,
8 NMSA 1978, Section 30-31-28 (1972), to enhance his sentence as a habitual offender
9 under NMSA 1978, Section 31-18-17 (2003). [DS 2] In this Court’s notice of
10 proposed summary disposition, we proposed to find no error. We relied on the fact
11 that the record reflects that the heroin charge was never conditionally discharged
12 because Ramirez failed to successfully complete the required period of probation. [RP
13 95-96 (stating that Ramirez’s probation was revoked and the conditional discharge
14 “withdrawn,” and ordering Ramirez to be incarcerated for the remainder of his
15 original sentence)]

16 {3} In Ramirez’s memorandum in opposition, he continues to argue, pursuant to
17 *State v. Franklin*, 1967-NMSC-151, 78 N.M. 127, 428 P.2d 982, and *State v. Boyer*,
18 1985-NMCA-029, 103 N.M. 655, 712 P.2d 1, that reversal is required. However, he
19 provides no new facts or authorities that persuade us that our proposed summary

1 disposition was in error. “Our courts have repeatedly held that, in summary calendar
2 cases, the burden is on the party opposing the proposed disposition to clearly point out
3 errors in fact or law.” *Hennesy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754,
4 955 P.2d 683. Ramirez has failed to do so.

5 {4} Therefore, for the reasons stated here and in our notice of proposed summary
6 disposition, we affirm.

7 {5} **IT IS SO ORDERED.**

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MICHAEL E. VIGIL, Judge

10 **WE CONCUR:**

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JAMES J. WECHLSER, Judge

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TIMOTHY L. GARCIA, Judge