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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. 34,057**

5       **CHRISTOPHER FRANKLIN,**

6             Defendant-Appellant.

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

8       **William G. Shoobridge, District Judge**

9       Hector H. Balderas, Attorney General

10       Santa Fe, NM

11       Kenneth H. Stalter, Assistant Attorney General

12       Albuquerque, NM

13       for Appellee

14       Jorge A. Alvarado, Chief Public Defender

15       B. Douglas Wood III, Assistant Appellate Defender

16       Santa Fe, NM

17       for Appellant

18                                       **MEMORANDUM OPINION**

19       **GARCIA, Judge.**

1 {1} Defendant appeals following entry of the “order revoking probation and  
2 imposing judgment and sentence.” [RP 173, 175] Defendant specifically appeals from  
3 the district court’s ruling that denies his post-judgment challenge to the sentence for  
4 untimeliness. [RP 182] Our notice proposed to reverse and remand, on the basis that  
5 Defendant’s December 18, 2013, motion to amend the judgment and sentence  
6 (motion) [RP 179] was a timely and outstanding Rule 5-801(B) NMRA motion that  
7 the district court failed to consider on its merits. The State has notified this Court that  
8 it does not oppose our notice.

9 {2} For the reasons provided in our notice, we reverse and remand for consideration  
10 of the merits of Defendant’s outstanding motion.

11 {3} **IT IS SO ORDERED.**

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**TIMOTHY L. GARCIA, Judge**

14 **WE CONCUR:**

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**MICHAEL E. VIGIL, Chief Judge**

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**JONATHAN B. SUTIN, Judge**