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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. 34,060 & 34,074
(Consolidated)

5
6 **DENNY FOUST,**

7 Defendant-Appellant.

8 **APPEAL FROM THE DISTRICT COURT OF LINCOLN COUNTY**

9 **Karen L. Parsons, District Judge**

10 Hector H. Balderas, Attorney General

11 James W. Grayson, Assistant Attorney General

12 Santa Fe, NM

13 for Appellee

14 Jorge A. Alvarado, Chief Public Defender

15 Kathleen T. Baldrige, Assistant Appellate Defender

16 Santa Fe, NM

17 for Appellant

18 **MEMORANDUM OPINION**

19 **VANZI, Judge.**

1 {1} Defendant challenges the district court’s denial of his oral motion to withdraw
2 his plea and proceed to trial. [DS unnumbered 1] This Court issued two calendar
3 notices in this case. In our second calendar notice, we proposed to affirm because
4 Defendant was told, before entering his plea, that his plea was contingent only on the
5 filing, not pursual, of federal charges, and federal charges were indeed filed. [2nd CN
6 4] Defendant has filed a memorandum in opposition to this Court’s second calendar
7 notice, which we have duly considered. Unpersuaded, we affirm.

8 {2} In this Court’s second calendar notice, we proposed to hold that the district
9 court did not abuse its discretion by not allowing Defendant to withdraw his plea
10 because Defendant had been expressly informed prior to entry of the plea that he
11 could only withdraw his plea if federal charges were never filed—and that Defendant
12 could not withdraw his plea in the event that federal charges were filed but later
13 dropped or dismissed. [2nd CN 4; MIO 5] Accordingly, we proposed to conclude that
14 the district court adhered to the terms of the oral agreement made at the plea hearing
15 and that Defendant’s plea was entered into knowingly and voluntarily. [2nd CN 4] *See*
16 *State v. Hunter*, 2006-NMSC-043, ¶ 12, 140 N.M. 406, 143 P.3d 168 (“A trial court
17 abuses its discretion when it denies a motion to withdraw a plea that was not knowing
18 or voluntary.”).

1 {3} In his memorandum in opposition, Defendant does not dispute the factual
2 recitation provided in our second calendar notice. Defendant agrees that the district
3 court “explained to him that he could only withdraw his plea if the federal government
4 declined to charge him” and that the court specifically told him “that if the federal
5 government charged him, but decided not to proceed with the charge, he could not
6 withdraw his plea.” [2nd MIO 2] Defendant stated that he understood these terms and
7 entered a plea of no contest. [2nd MIO 2, 5] Defendant maintains, however, that he
8 should be allowed to withdraw his plea because he entered the plea “in contemplation
9 of federal proceedings.” [2nd MIO 6] In doing so, Defendant has failed to demonstrate
10 that his plea was not entered into knowingly and voluntarily.

11 {4} Additionally, Defendant has advanced no new arguments in his memorandum
12 in opposition. Accordingly, we conclude that Defendant has failed to demonstrate
13 error on appeal. *See State v. Ibarra*, 1993-NMCA-040, ¶ 11, 116 N.M. 486, 864 P.2d
14 302 (“A party opposing summary disposition is required to come forward and
15 specifically point out errors in fact and/or law.”).

16 {5} For the reasons stated above and in this Court’s second notice of proposed
17 disposition, we affirm.

18 {6} **IT IS SO ORDERED.**

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2

LINDA M. VANZI, Judge

3 **WE CONCUR:**

4

5 **JONATHAN B. SUTIN, Judge**

6

7 **J. MILES HANISEE, Judge**