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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. 34,122

5 **TERRANCE VYSHANN LAMB,**

6 Defendant-Appellant.

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

8 **Daniel Viramontes, District Judge**

9 Hector H. Balderas, Attorney General

10 Margaret McLean, Assistant Attorney General

11 Santa Fe, NM

12 for Appellee

13 Attorney at Law

14 Linda Helen Bennette

15 Albuquerque, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **GARCIA, Judge.**

1 {1} Defendant appeals his convictions, pursuant to a plea agreement, for the felony
2 crimes of embezzlement and criminal damage to property. [RP 64] Our notice
3 proposed to affirm, and Defendant filed a memorandum in opposition. We remain
4 unpersuaded by Defendant’s arguments, and thus affirm.

5 {2} Defendant continues to argue he should have been allowed to withdraw his
6 plea. [DS 2; MIO 1] *See generally State v. Carlos*, 2006-NMCA-141, ¶ 9, 140 N.M.
7 688, 147 P.3d 897 (“A motion to withdraw a guilty plea is addressed to the sound
8 discretion of the trial court, and we review the trial court’s denial of such a motion
9 only for abuse of discretion.”). As a basis for his argument, Defendant maintains that
10 his trial counsel was ineffective because he did not adequately pursue available
11 defenses, or otherwise adequately communicate with Defendant and investigate his
12 case for purposes of uncovering facts that would have brought these defenses to light.
13 [MIO 3-6] *See generally State v. Joanna V.*, 2003-NMCA-100, ¶ 11, 134 N.M. 232,
14 75 P.3d 832 (“Where the defendant enters a plea upon her attorney’s advice, the
15 voluntariness and intelligence of the plea generally depends on whether she received
16 ineffective assistance of counsel.”). As we provided in our notice, however,
17 Defendant’s ineffective assistance of counsel claim relates to matters not of record and
18 thus does not provide a basis for relief on direct appeal. *See State v. Martinez*, 1996-
19 NMCA-109, ¶ 25, 122 N.M. 476, 927 P.2d 31 (stating that “[t]his Court has expressed

1 its preference for habeas corpus proceedings over remand when the record on appeal
2 does not establish a prima facie case of ineffective assistance of counsel”).

3 {3} We accordingly affirm.

4 {4} **IT IS SO ORDERED.**

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6

TIMOTHY L. GARCIA, Judge

7 **WE CONCUR:**

8

RODERICK T. KENNEDY, Judge

10

J. MILES HANISEE, Judge