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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. 34,149

5 **CONRAD VILLEGAS, JR.,**

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 Jorge A. Alvarado, Chief Public Defender

14 Will O'Connell, Assistant Appellate Defender

15 Santa Fe, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **BUSTAMANTE, Judge.**

1 {1} Defendant contends that he received an illegal sentence when, following a
2 probation violation, the trial court did not credit him with the time he served while
3 incarcerated on his original sentence. [DS 5] Our notice agreed with Defendant and
4 proposed to reverse and remand for resentencing.

5 {2} The State has responded to our notice, indicating that the State does not oppose
6 our proposed disposition. [MIO 2] Additionally, we note that the State suggests that
7 Defendant is entitled to 365 days of credit, as opposed to 364 days, as provided in our
8 notice. [MIO 2; DS 5; CN 2]

9 {3} Accordingly, for the reasons detailed in our notice and discussed above, we
10 reverse and remand to the district court for resentencing.

11 {4} **IT IS SO ORDERED.**

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MICHAEL D. BUSTAMANTE, Judge

15 **WE CONCUR:**

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MICHAEL E. VIGIL, Chief Judge

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RODERICK T. KENNEDY, Judge