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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. 34,168 & 34,228
(consolidated)

5
6 **CODY RUIZ,**

7 Defendant-Appellant.

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

9 **Mark Sanchez, District Judge**

10 Hector H. Balderas, Attorney General

11 Santa Fe, NM

12 for Appellee

13 Templeman & Crutchfield, PA

14 Barry C. Crutchfield

15 Lovington, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **GARCIA, Judge.**

1 {1} Defendant Cody Ruiz appeals from his judgment and sentence, entered pursuant
2 to a plea agreement, convicting him of two counts of homicide by vehicle pursuant to
3 NMSA 1978, Section 66-8-101 (2004). Persuaded by Defendant’s docketing
4 statement, we entered a notice of proposed summary disposition, proposing to reverse.
5 In response to our notice, the State has filed a memorandum in opposition. Having
6 considered these submissions, we reverse the district court’s finding that the two
7 counts of homicide by vehicle were “serious violent offenses” and remand to the
8 district court to reconsider this issue and enter findings, if necessary.

9 {2} This Court’s proposed disposition explained that while a district court may
10 deem a discretionary offense under the Earned Meritorious Deductions Act (EMDA),
11 NMSA 1978, Section 33-2-34 (2006), a “serious violent offense,” it may do so only
12 if it makes sufficient findings supporting such a designation. *See State v. Loretto*,
13 2006-NMCA-142, ¶¶ 11-14, 140 N.M. 705, 147 P.3d 1138. Because the district court
14 in this case failed to make the necessary findings, we proposed to reverse the EMDA
15 portion of Defendant’s sentence. In response, the State concedes that findings are
16 required and that the district court failed to make any, but asserts that the appropriate
17 remedy is “a remand to the district court for reconsideration of the issue” not “outright
18 reversal.”[MIO 4-5]

1 {3} We appreciate the State’s efforts to clarify the appropriate remedy, and agree
2 with the State that the EMDA portion of Defendant’s sentence should be reversed and
3 this case should be remanded to the district court to reconsider this issue, and if the
4 district court again determines that the “serious violent offense” designation is
5 warranted, the court should make the necessary findings. *See State v. Morales*, 2002-
6 NMCA-016, ¶¶ 18-19, 131 N.M. 530, 39 P.3d 747, *abrogated on other grounds by*
7 *State v. Frawley*, 2007-NMSC-057, ¶ 36, 143 N.M. 7, 172 P.3d 144; *Loretto*, 2006-
8 NMCA-142, ¶¶ 21-22.

9 {4} We conclude that while there could be a factual basis to support the
10 determination that the offenses in this case should be designated serious violent
11 offenses under the EMDA, the district court’s failure to make such findings warrants
12 reversal. For the reasons stated above and in our calendar notice, we reverse and
13 remand this case to the district court for proceedings consistent with this opinion.

14 {5} **IT IS SO ORDERED.**

15
16

TIMOTHY L. GARCIA, Judge

17 **WE CONCUR:**

18

1 **LINDA M. VANZI, Judge**

2

3 **J. MILES HANISEE, Judge**