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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. 34,455

5 **NICHOLAS RAY LOPEZ,**

6 Defendant-Appellant.

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

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

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Jorge A. Alvarado, Chief Public Defender

13 Sergio Viscoli, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **GARCIA, Judge.**

18 {1} Appellant Nicholas Ray Lopez (Defendant) appeals from the district court's

1 denial of his motion to withdraw his guilty plea. [DS 1; RP 114–17, 192] In this
2 Court’s notice of proposed disposition, we proposed to affirm the district court’s
3 denial of Defendant’s motion. [CN 1] Defendant filed a memorandum in opposition.
4 We have given due consideration to the memorandum in opposition, and, remaining
5 unpersuaded, we affirm.

6 {2} Defendant continues to argue he should have been allowed to withdraw his plea
7 on the basis that he received ineffective assistance of counsel. [DS 5; MIO 7] In this
8 Court’s notice of proposed disposition, we noted that in order to make a prima facie
9 case of ineffective assistance of counsel warranting withdrawal of a plea, Defendant
10 must show that counsel’s performance was deficient, and the deficient performance
11 prejudiced his defense. *See State v. Aker*, 2005-NMCA-063, ¶ 34, 137 N.M. 561, 113
12 P.3d 384. [CN 2-3] In his memorandum in opposition, Defendant again responds by
13 asserting facts that are not of record to show ineffective assistance of counsel. [CN 2-
14 4] Though the district court held a hearing on Defendant’s motion and took argument
15 from counsel and statements from Defendant [MIO 6; RP 193], Defendant does not
16 present facts from the hearing to support his argument. [MIO 6] We note that “[f]or
17 this Court to remand to the trial court on this issue, the defendant must present a prima
18 facie case of ineffective assistance of counsel. Without such prima facie evidence, the
19 Court presumes that defense counsel’s performance fell within the range of reasonable

1 representation.” *State v. Arrendondo*, 2012-NMSC-013, ¶ 38, 278 P.3d 517 (citation
2 omitted). Because Defendant’s assertions are based on facts not of record [MIO 2-4;
3 RP 192-93], they do not provide a basis for relief on direct appeal and may be more
4 appropriately addressed in habeas corpus proceedings, where he may develop a record
5 with respect to these issues. *See State v. Martinez*, 1996-NMCA-109, ¶ 25, 122 N.M.
6 476, 927 P.2d 31; *State v. Arrendondo*, 2012-NMSC-013, ¶ 43.

7 {3} Consequently, for the reasons stated above and in this Court’s notice of
8 proposed disposition, we affirm.

9 {4} **IT IS SO ORDERED.**

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11

TIMOTHY L. GARCIA, Judge

12 **WE CONCUR:**

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14

MICHAEL E. VIGIL, Chief Judge

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J. MILES HANISEE, Judge