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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

2 STATE OF NEW MEXICO,

Plaintiff-Appellee,

4 v.

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No. 35,350

5 JERRY CAPPS,

6 Defendant-Appellant.

7 APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY 8 Lisa B. Riley, District Judge

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 Laurie Blevins, Assistant Attorney General

12 Albuquerque, NM

13 for Appellee

14 L. Helen Bennett, P.C.

15 L. Helen Bennett

16 Albuquerque, NM

17 for Appellant

18

MEMORANDUM OPINION

19 VIGIL, Judge.

20 {1} Defendant appeals his judgment and sentence following conviction of two

1	counts of possession of a controlled substance, challenging the district court's
2	calculation of credit for presentence confinement. This Court's second notice of
3	proposed summary disposition proposed to hold that Defendant was entitled to
4	presentence confinement credit for seventy days that were omitted from the
5	calculation below. [2CN 3] In response, the State has filed a notice that it concurs in
6	that proposed disposition. We, therefore, reverse the sentence entered below and
7	remand this case to the district court for the purpose of recalculating Defendant's
8	presentence confinement and entering a new sentence, in accordance with NMSA
9	1978, Section 31-20-12 (1977).
10	{2} IT IS SO ORDERED.
11 12	MICHAEL E. VIGIL, Judge
13	WE CONCUR:
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15	JAMES J. WECHSLER, Judge
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17	STEPHEN G. FRENCH, Judge