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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. 35,739

5 **JOHNIE BURNETTE,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**

8 **Marci Beyer, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 Jane A. Bernstein, Assistant Attorney General

12 Albuquerque, NM

13 for Appellee

14 Bennett J. Baur, Chief Public Defender

15 Will O'Connell

16 Assistant Appellate Defender

17 Santa Fe, NM

18 for Appellant

19 **MEMORANDUM OPINION**

20 **VANZI, Chief Judge.**

1 {1} Following a guilty plea to aggravated driving while under the influence of
2 intoxicating liquor or drugs (DWI), contrary to NMSA 1978, § 66-8-102(D)(1)
3 (2016), and driving the wrong way (one-way roadway), contrary to NMSA 1978,
4 § 66-7-316 (2003), [DS 2; RP 56] Defendant appealed from the judgment and
5 sentence, arguing that one of the prior DWIs used for enhancement to a fourth DWI
6 was invalid because the State did not establish that he was represented by counsel. We
7 issued a first notice of proposed summary disposition proposing to affirm. In response,
8 Defendant filed a memorandum in opposition. Upon consideration of Defendant's
9 arguments, we issued a second notice of proposed summary disposition proposing to
10 reverse. The State has filed a timely response indicating that it will not be filing a
11 memorandum in opposition. Accordingly, for the reasons set forth in our second
12 notice of proposed summary disposition, we reverse.

13 {2} **IT IS SO ORDERED.**

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LINDA M. VANZI, Chief Judge

16 **WE CONCUR:**

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JONATHAN B. SUTIN, Judge

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M. MONICA ZAMORA, Judge