

1 **GARCIA, Judge.**

2 {1} Plaintiff-Appellant Joshua Griego (Driver) appeals from the district court's on-
3 record decision upholding the administrative hearing officer's revocation of his
4 driver's license. We previously issued a notice of proposed summary disposition in
5 which we proposed to dismiss. Driver has filed a memorandum in opposition, which
6 we have duly considered. Because we remain unpersuaded, we dismiss.

7 {2} Our notice proposed to dismiss on the basis that Driver filed a notice of appeal
8 and docketing statement with this Court, as opposed to a petition for writ of certiorari,
9 since Driver was seeking review of Motor Vehicle Division's (MVD) license
10 revocation decision. [CN 2-4] *See Dixon v. N.M. Taxation & Revenue Dep't*,
11 2004-NMCA-044, ¶¶ 9-10, 135 N.M. 431, 89 P.3d 680 (explaining that a party
12 seeking review in this Court of a district court's determination on appeal from an
13 MVD decision revoking a license should file a petition for writ of certiorari). Our
14 notice explained that we were unable to construe either Driver's notice of appeal or
15 docketing statement as a timely non-conforming petition for writ of certiorari because
16 the notice of appeal did not contain sufficient information and the docketing statement
17 was filed sixty days after the entry of the district court's order. [CN 3-4]

18 {3} We further observed that the district court was acting in its appellate jurisdiction
19 in its affirmance of the administrative hearing office, [RP 87-98] *see Maso v. N.M.*

1 *Taxation & Revenue Dep't*, 2004-NMCA-025, ¶ 13, 135 N.M. 152, 85 P.3d 276
2 (explaining that the district court is the “exclusive forum for appeals from MVD
3 hearings[,]” but “[i]n its role as an appellate tribunal, . . . the district court is limited
4 by the scope of appellate review”). A party seeking review from a judgment reflecting
5 an exercise of the district court’s discretion is required to file a petition for writ of
6 certiorari in this Court. *See Glynn v. N.M. Taxation & Revenue Dep't*,
7 2011-NMCA-031, ¶ 8, 149 N.M. 518, 252 P.3d 742, *overruled on other grounds by*
8 *Schuster v. N.M. Taxation & Revenue Dep't*, 2012-NMSC-025, ¶¶ 1, 19, 283 P.3d 288.
9 [CN 2–3]

10 {4} Our notice went on to observe that our case law has made clear that a non-
11 conforming document will be accepted as a petition for writ of certiorari if the
12 document provides sufficient information to address the petition on its merits. *See*
13 *Wakeland v. N.M. Dep't of Workforce Solutions*, 2012-NMCA-021, ¶ 16, 274 P.3d
14 766. However, absent unusual circumstances, the non-conforming petition must be
15 timely filed. *Id.* ¶ 20. In response, Driver does not assert that there were any unusual
16 circumstances in this case. Instead, Driver argues that because his docketing statement
17 was filed within thirty days of the filing of the notice of appeal, within the time set
18 forth under Rule 12-208 NMRA, this Court should consider his docketing statement
19 to be a timely filed petition for writ of certiorari. [MIO 3] Otherwise, Driver argues

1 that “the [n]otice of [a]ppeal would have to be filed along with the docketing
2 statement, or within a close time frame, to be considered a timely non-conforming
3 petition to this Court[, which] would defeat the purpose of a non-conforming
4 document[.]” [MIO 3]

5 {5} Our case law has acknowledged that “a party who erroneously files a notice of
6 appeal and docketing statement instead of a petition for writ of certiorari is likely to
7 miss the thirty-day requirement of Rule 12-505(C)[NMRA] even though the notice
8 of appeal and docketing statement would have been timely if the appeal were as of
9 right.” *Wakeland*, 2012-NMCA-021, ¶ 18. “In those unusual cases where a party
10 happens to file both the notice of appeal and the docketing statement early so that the
11 docketing statement is filed in this Court within thirty days of the district court’s order
12 and therefore meets the time requirement of Rule 12-505(C), this Court will construe
13 the docketing statement as a petition for writ of certiorari without requiring any
14 showing of unusual circumstances, since the non-conforming document is timely and
15 substantially complies with the content requirements of Rule 12-505 under a liberal
16 interpretation.” *Wakeland*, 2012-NMCA-021, ¶ 19. However, because the timely filed
17 petition for writ of certiorari is a mandatory precondition to this Court’s exercise of
18 jurisdiction, we cannot accept a docketing statement that was filed in this Court after
19 thirty days of the district court’s order. *See id.* ¶ 20. We see no reason, and Driver has

1 not articulated any reason, for us to depart from our established case law requiring a
2 non-conforming petition to meet the timeliness requirement of Rule 12-505(C).

3 {6} To the extent Driver continues to argue that his notice of appeal, filed within
4 thirty days of the district court's order, should be accepted as a timely non-conforming
5 petition, [MIO 2] we remain unpersuaded. *See Wakeland*, 2012-NMCA-021, ¶ 14
6 (discussing our case law holding that “because a notice of appeal contains no
7 information about the issues raised on appeal, it cannot substitute for a petition for
8 writ of certiorari since it does not substantially comply with the content requirements
9 for a petition”).

10 {7} Finally, Driver argues that we should extend the *Duran* presumption to accept
11 his late filed docketing statement and consider the merits of the appeal. *See State v.*
12 *Duran*, 1986-NMCA-125, ¶¶ 3, 6, 105 N.M. 231, 731 P.2d 374 (holding that there is
13 a conclusive presumption of ineffective assistance of counsel where notice of appeal
14 is not filed within the time limit required). We decline to do so. The *Duran*
15 presumption is limited to primarily criminal cases, and does not extend to civil cases
16 such as this.

17 {8} In sum, Driver has not demonstrated that the basis for dismissal proposed in our
18 notice was in error. Accordingly, for the reasons stated above and in the notice of
19 proposed summary disposition, we dismiss.

1 {9} **IT IS SO ORDERED.**

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TIMOTHY L. GARCIA, Judge

4 **WE CONCUR:**

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6 **LINDA M. VANZI, Chief Judge**

7

8 **JAMES J. WECHSLER, Judge**