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1           **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

3                   Plaintiff-Appellant,

4 **v.**

**No. 36,244**

5 **MARIO TOBY GARCIA,**

6                   Defendant-Appellee.

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

8 **Cristina T. Jaramillo, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellant

12 Bennett J. Baur, Chief Public Defender

13 J.K. Theodosia Johnson, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellee

16                                   **MEMORANDUM OPINION**

17 **HANISEE, Judge.**

1 {1} The State appeals from the district court’s order dismissing the case without  
2 prejudice pursuant to LR2-400(I) NMRA (2016).<sup>1</sup> [RP 18] Persuaded by the State’s  
3 docketing statement, we entered a notice of proposed summary disposition, proposing  
4 to reverse. Defendant has filed a joint motion to amend and memorandum in  
5 opposition (MIO) to our notice. We are unpersuaded by Defendant’s arguments and  
6 therefore reverse.

7 {2} In its docketing statement, the State articulated four issues—all of which relate  
8 to the central contention that the district court erred in dismissing the case pursuant  
9 to LR2-400. Our notice, which proposed summary reversal, set forth the relevant facts  
10 for each issue and the law that we believed controlled. In response,  
11 Defendant argues, pursuant to *State v. Franklin*,  
12 1967–NMSC–151, 78 N.M. 127, 428 P.2d 982, and its  
13 progeny, that the district court did not abuse its  
14 discretion when it dismissed the case. [MIO 11]  
15 Defendant’s MIO does not supply any legal or factual argument that persuades us that  
16 our analysis or proposed disposition was incorrect. *See State v. Mondragon*, 1988-  
17 NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that “[a] party responding

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20 <sup>1</sup>LR2-400 has been recompiled and amended as LR2-308 NMRA. For purposes  
21 of this case, the relevant provisions are the same.

1 to a summary calendar notice must come forward and specifically point out errors of  
2 law and fact[.]” and the repetition of earlier arguments does not fulfill this  
3 requirement), *superseded by statute on other grounds as stated in State v. Harris*,  
4 2013-NMCA-031, ¶ 3, 297 P.3d 374. Accordingly, we decline to  
5 address this issue any further.

6 {3} Defendant has also filed a motion to amend the  
7 docketing statement to add the issue of whether  
8 this Court has jurisdiction to hear this appeal. [MIO  
9 1] Specifically, Defendant asserts that we do not  
10 have jurisdiction “because the State is not aggrieved  
11 by an order dismissing the case without prejudice.”  
12 [MIO 1] However, there is no provision permitting an  
13 appellee to amend the appellant’s docketing  
14 statement. *See generally* Rule 12–208 NMRA; Rule  
15 12–210 NMRA. Additionally, even if Defendant could  
16 amend the State’s docketing statement to include  
17 the issue he raises, *State v. Lucero*, 2017–NMCA–

1 \_\_\_\_\_, \_\_\_\_ P.3d \_\_\_\_\_, (No. 34,713, Apr. 3, 2017),  
2 forecloses his arguments. To the extent Defendant  
3 urges us to reconsider *Lucero*, we decline to do so.

4 {4} Accordingly, for the foregoing reasons, we reverse the district court and  
5 remand for further proceedings.

6 {5} **IT IS SO ORDERED.**

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**J. MILES HANISEE, Judge**

9 **WE CONCUR:**

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**LINDA M. VANZI, Chief Judge**

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**M. MONICA ZAMORA, Judge**