



1 drugs (DWI), driving on roadways laned for traffic, and open container in vehicle,  
2 each contrary to Aztec, N.M., City Code § 24-21-1 (2007). [See RP 89; DS 1] In this  
3 Court's notice of proposed disposition, we proposed to summarily affirm. Defendant  
4 filed a memorandum in opposition that we have duly considered. Remaining  
5 unpersuaded, we affirm.

6 {2} We initially note that, in his docketing statement, Defendant raised six issues  
7 to which this Court responded in our notice of proposed disposition. [See DS 5-6; CN  
8 1-14] In his memorandum in opposition, Defendant continues to argue only his speedy  
9 trial issue. [See MIO 1-4] Accordingly, the remaining five issues are deemed  
10 abandoned. *See State v. Johnson*, 1988-NMCA-029, ¶ 8, 107 N.M. 356, 758 P.2d 306  
11 (explaining that when a case is decided on the summary calendar, an issue is deemed  
12 abandoned when a party fails to respond to the proposed disposition of that issue). We  
13 therefore respond to Defendant's speedy trial issue.

14 {3} In his docketing statement, Defendant contended that the district court erred in  
15 denying his motion to dismiss for violation of his speedy trial rights. [DS 6] However,  
16 because Defendant failed to provide any authority for these contentions or develop his  
17 arguments, factually or legally, in any meaningful way, in our notice of proposition  
18 disposition, this Court proposed to rely on presumptions and affirm. [See CN 7-8] In

1 his memorandum in opposition, Defendant sets forth the relevant dates and continues  
2 to assert that his speedy trial rights were violated. [See MIO 1-4]

3 {4} According to Defendant, he was arrested and booked on September 11, 2015  
4 and bonded out the next day on September 12, 2015. [MIO 1] He pleaded not guilty,  
5 and he was adjudicated guilty at his municipal court trial on or about March 2, 2016.  
6 [MIO 1] On March 3, 2016, Defendant timely appealed to the district court. [MIO 1-2]  
7 On March 11, 2016, he filed, among other things, a demand for speedy trial. [MIO 2]  
8 A jury trial was noticed for July 21, 2016 but the City's motion for continuance was  
9 granted, and a new trial was set for September 1, 2016. [MIO 2] Subsequently, for  
10 reasons unclear from Defendant's memorandum in opposition and the record, the trial  
11 was rescheduled for October 28, 2016. [MIO 2; RP 45, 47-48] After the jury trial was  
12 rescheduled for October 28, 2016, the City moved to vacate the jury trial and reset the  
13 matter as a bench trial because Defendant was not entitled to a jury trial. [MIO 2; RP  
14 49] A bench trial was scheduled for December 21, 2016. [MIO 2-3]

15 {5} Based on these facts, Defendant asserts that by the time of the bench trial the  
16 charges against him had been pending for over fifteen months, over eight of which  
17 were part of the de novo appeal to the district court, through no fault of his. [MIO 3]  
18 Defendant argues that because his de novo appeal had been pending in the district  
19 court since March 3, 2016—i.e., for more than six months from the filing of the notice

1 of appeal—and because all of the continuances were obtained by the prosecution, his  
2 speedy trial rights were violated. [MIO 3] Defendant further argues that because the  
3 trial only took just over two hours, it was clearly a simple case and an eight-month  
4 delay is unreasonable. [MIO 4] However, the only statement that Defendant offers  
5 regarding the purported prejudice that he suffered is that the “excessive delay for no  
6 good reason, together with the availability of mechanisms to speedily bring this case  
7 to trial,” created prejudice for him. [MIO 4] In other words, Defendant argues that he  
8 was prejudiced simply because the case could have proceeded more quickly than eight  
9 months. [*See id.*]

10 {6} “In determining whether a defendant’s speedy trial right was violated, [New  
11 Mexico] has adopted the United States Supreme Court’s balancing test in *Barker v.*  
12 *Wingo*, 407 U.S. 514 . . . (1972).” *State v. Smith*, 2016-NMSC-007, ¶ 58, 367 P.3d  
13 420. “Under the *Barker* framework, courts weigh the conduct of both the prosecution  
14 and the defendant under the guidance of four factors: (1) the length of the delay; (2)  
15 the reasons for the delay; (3) the timeliness and manner in which the defendant  
16 asserted his speedy trial right; and (4) the particular prejudice that the defendant  
17 actually suffered.” *Id.* (internal quotation marks and citation omitted). “In analyzing  
18 these factors, we defer to the district court’s factual findings that are supported by  
19 substantial evidence, but we independently review the record to determine whether a

1 defendant was denied his speedy trial right and we weigh and balance the *Barker*  
2 factors de novo.” *State v. Flores*, 2015-NMCA-081, ¶ 4, 355 P.3d 81. Our Supreme  
3 Court has emphasized that “[t]he heart of the right to a speedy trial is preventing  
4 prejudice to the accused.” *State v. Serros*, 2016-NMSC-008, ¶ 4, 366 P.3d 1121  
5 (internal quotation marks and citation omitted).

6 {7} “The length of delay serves two purposes under the speedy trial analysis.” *State*  
7 *v. Spearman*, 2012-NMSC-023, ¶ 20, 283 P.3d 272. First, it “acts as a triggering  
8 mechanism requiring further inquiry into the *Barker* factors once the delay has  
9 reached a specified amount of time, depending on the difficulty of the case.”  
10 *Spearman*, 2012-NMSC-023, ¶ 20 (internal quotation marks and citation omitted).

11 Second, it is “one of the four *Barker* factors to be weighed and balanced in the final  
12 speedy trial inquiry.” *Spearman*, 2012-NMSC-023, ¶ 20. “A delay of trial of twelve  
13 months is presumptively prejudicial in simple cases[.]” *Flores*, 2015-NMCA-081, ¶ 5.

14 In the present case, the eight-month delay complained of by Defendant does not meet  
15 this “presumptively prejudicial” standard. *Cf. Town of Bernalillo v. Garcia*, 1994-  
16 NMCA-111, ¶ 15, 118 N.M. 610, 884 P.2d 501 (indicating that in a de novo appeal  
17 to the district court, the relevant time period to analyze for speedy trial purposes is the  
18 time from the filing of the defendant’s notice of appeal in the district court to the date  
19 of the trial). Accordingly, the *Barker* factors have not been triggered. *See State v.*

1 *Garza*, 2009-NMSC-038, ¶ 15, 146 N.M. 499, 212 P.3d 387 (quoting with approval  
2 *Barker*'s explanation that "[u]ntil there is some delay which is presumptively  
3 prejudicial, there is no necessity for inquiry into the other factors that go into the  
4 balance" (internal quotation marks and citation omitted)).

5 {8} Additionally, in *Garza*, our Supreme Court clarified that even if the length of  
6 delay is presumptively prejudicial, unless the other factors weight heavily in the  
7 defendant's favor, "[the d]efendant must still show particularized prejudice cognizable  
8 under his constitutional right to a speedy trial and demonstrate that, on the whole, the  
9 *Barker* factors weigh in his favor." *Smith*, 2016-NMSC-007, ¶ 59; *Garza*, 2009-  
10 NMSC-038, ¶ 39. In determining "whether [the d]efendant has suffered prejudice  
11 from the delay in bringing his case to trial, we analyze three interests that are affected  
12 by the right to a speedy trial: (i) to prevent oppressive pretrial incarceration; (ii) to  
13 minimize anxiety and concern of the accused; and (iii) to limit the possibility that the  
14 defense will be impaired." *Serros*, 2016-NMSC-008, ¶ 84 (internal quotation marks  
15 and citation omitted). In the present case, Defendant has failed to show particularized  
16 prejudice cognizable under his constitutional right to a speedy trial. *See Smith*, 2016-  
17 NMSC-007, ¶ 59. Indeed, Defendant's failure to identify any actual prejudice  
18 suffered, instead only stating that prejudice existed because the case was slightly  
19 delayed [*see* MIO 4], is an insufficient showing of prejudice that does not address any

1 of the above-identified interests. *See State v. Suskiewich*, 2016-NMCA-004, ¶ 31, 363  
2 P.3d 1247 (concluding that the defendant’s speedy trial rights were not violated when  
3 he failed to demonstrate prejudice and the other factors did not weigh heavily in his  
4 favor); *see also Serros*, 2016-NMSC-008, ¶ 4 (emphasizing that “[t]he heart of the  
5 right to a speedy trial is preventing prejudice to the accused” (internal quotation marks  
6 and citation omitted)); *Garza*, 2009-NMSC-038, ¶ 39 (explaining that “generally a  
7 defendant must show particularized prejudice,” and it is only where “the length of  
8 delay and the reasons for the delay weigh heavily in [the] defendant’s favor and [the]  
9 defendant has asserted his right and not acquiesced to the delay” that “the defendant  
10 need not show [particularized] prejudice” in order to prevail on a speedy trial claim).  
11 We therefore conclude that Defendant’s right to a speedy trial was not violated.

12 {9} Accordingly, for the reasons set forth in our notice of proposed disposition and  
13 herein, we affirm Defendant’s convictions.

14 {10} **IT IS SO ORDERED.**

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**JONATHAN B. SUTIN, Judge**

17 **WE CONCUR:**

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19 **M. MONICA ZAMORA, Judge**

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**J. MILES HANISEE, Judge**