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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. A-1-CA-35958

5 **LOUIS GARCIA,**

6 Defendant-Appellant.

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

8 **Daniel Viramontes, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender

13 Kathleen T. Baldrige, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **ZAMORA, Judge.**

18 {1} Defendant appeals from the sentence imposed by the district court on grounds

19 that it is excessive and constitutes cruel and unusual punishment. [Amended DS 3]

1 This Court's calendar notice proposed to summarily affirm. Defendant filed a
2 memorandum in opposition, which we have duly considered. Remaining unpersuaded
3 by Defendant's arguments, we affirm.

4 {2} Defendant acknowledges that he was advised of the maximum penalties for the
5 charges to which he plead, and that his sentence is legal. [MIO 3] *See State v.*
6 *Vasquez*, 2010-NMCA-041, ¶ 41, 148 N.M. 202, 232 P.3d 438 (“[T]here is no abuse
7 of discretion if the sentence imposed is authorized by law.”). Defendant also
8 recognizes that by entering into a plea agreement, he waived his right to challenge the
9 constitutionality of his sentence. [MIO 4] *See State v. Chavarria*, 2009-NMSC-020,
10 ¶ 9, 146 N.M. 251, 208 P.3d 896 (“[A] plea of guilty or nolo contendere, when
11 voluntarily made after advice of counsel and with full understanding of the
12 consequences, waives objections to prior defects in the proceedings and also operates
13 as a waiver of statutory or constitutional rights, including the right to appeal.”
14 (internal quotation marks and citation omitted)). Defendant nevertheless continues to
15 argue that his sentence is unjust and excessive in light of his no contest plea, which
16 spared the child victim from the stress and grief of having to take the stand to testify
17 at trial, and considering he is a “hard-working man who did a lot of good for a lot of
18 people.” [Amended DS 4-5; MIO 3] Defendant has not presented any facts, law or

1 argument to persuade this Court that our notice of proposed disposition was
2 erroneous. *See State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d
3 1003 (stating that a party responding to a summary calendar notice must come forward
4 and specifically point out errors of law and fact, and the repetition of earlier arguments
5 does not fulfill this requirement).

6 {3} For these reasons, and those stated in this Court’s calendar notice, we affirm.

7 {4} **IT IS SO ORDERED.**

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9

M. MONICA ZAMORA, Judge

10 **WE CONCUR:**

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LINDA M. VANZI, Chief Judge

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MICHAEL E. VIGIL, Judge