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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-36187**

5       **KEON HARRIS,**

6             Defendant-Appellant.

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

8       **Stan Whitaker, District Judge**

9       Hector H. Balderas, Attorney General

10       Santa Fe, NM

11       for Appellee

12       Bennett J. Baur, Chief Public Defender

13       Will O'Connell, Assistant Appellate Defender

14       Santa Fe, NM

15       for Appellant

16                                       **MEMORANDUM OPINION**

17       **VANZI, Chief Judge.**

18       {1}     Defendant Keon Harris appeals an order of conditional discharge in which the

19       district court declined his request for presentence confinement credit for time that he

1 was released but subject to GPS monitoring. [DS 3] This Court’s calendar notice  
2 proposed to affirm, noting that Defendant’s docketing statement did not address  
3 whether his pretrial release involved any limitations on his freedom of movement or  
4 how he was otherwise within actual or constructive state custody for purposes of the  
5 two-part rule announced in *State v. Fellhauer*, 1997-NMCA-064, ¶ 17, 123 N.M. 476,  
6 943 P.2d 123. *See also State v. Guillen*, 2001-NMCA-079, ¶ 7, 130 N.M. 803, 32 P.3d  
7 812 (describing the same rule).

8 {2} Toward that end, our calendar notice suggested as follows:

9 To the extent Defendant believes that the conditions of his pretrial  
10 release brought him within the two-part rule announced in *Fellhauer*,  
11 1997-NMCA-064, ¶ 17, he should fully summarize those conditions in  
12 any memorandum in opposition that he chooses to file with this Court.  
13 *See State v. Sisneros*, 1982-NMSC-068, ¶ 7, 98 N.M. 201, 647 P.2d 403  
14 (requiring party opposing summary disposition to “come forward and  
15 specifically point out errors in fact and in law”); *Muse v. Muse*,  
16 2009-NMCA-003, ¶ 72, 145 N.M. 451, 200 P.3d 104 (noting that this  
17 Court has no obligation to “search the record for facts, arguments, and  
18 rulings in order to support generalized arguments”).

19 [CN 4]

20 {3} Defendant has filed a memorandum in opposition to that proposed summary  
21 disposition in which he reasserts that he was subject to “supervision by Bernalillo  
22 County’s Pretrial Services program, and electronic monitoring by GPS as well.” [MIO  
23 3] Defendant goes on to point out that, as a result of that supervision and monitoring,  
24 he would have been prosecutable for the crime of escape from the community release

1 program. [Id.] That fact establishes the second half of the rule announced in  
2 *Fellhauer*. But Defendant's memorandum still does not assert that he was under house  
3 arrest, or identify any restrictions on his freedom of movement that were imposed  
4 prior to trial, or assert that he was otherwise within the actual or constructive custody  
5 of the state. [MIO 2] Because it does not appear that Defendant was under house arrest  
6 or subject to any other restrictions that would satisfy the first half of the  
7 *Fellhauer* rule, we affirm the judgment and sentence entered below.

8 {4} **IT IS SO ORDERED.**

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**LINDA M. VANZI, Chief Judge**

11 **WE CONCUR:**

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**STEPHEN G. FRENCH, Judge**

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**EMIL J. KIEHNE, Judge**