

This memorandum opinion was not selected for publication in the New Mexico Appellate Reports. Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions. Please also note that this electronic memorandum opinion may contain computer-generated errors or other deviations from the official paper version filed by the Court of Appeals and does not include the filing date.

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-36236

5 **GERALD JOHNSON, JR.,**

6 Defendant-Appellant.

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

8 **Stan Whitaker, District Judge**

9 Hector H. Balderas, Attorney General

10 Maris Veidemanis, Assistant Attorney General

11 Santa Fe, NM

12 for Appellee

13 Law Office of Scott M. Davidson, Ph.D

14 Scott M. Davidson

15 Albuquerque, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **VIGIL, Judge.**

1 {1} Defendant Gerald Johnson, Jr. appeals following re-sentencing upon remand
2 by this Court and asserts on appeal the district court erred by denying him the
3 opportunity to allocute and to present mitigating evidence at his resentencing. [3 RP
4 553; DS 3-4] This Court issued a notice proposing to summarily reverse. [CN 1, 3-4]
5 The State filed a response indicating it will not file a memorandum in opposition to
6 our notice of proposed disposition. Therefore, based on the reasons set forth in this
7 Court's notice of proposed disposition, we reverse.

8 {2} **IT IS SO ORDERED.**

9
10

MICHAEL E. VIGIL, Judge

11 **WE CONCUR:**

12
13

LINDA M. VANZI, Chief Judge

14
15

STEPHEN G. FRENCH, Judge