

1 {1} Defendant Jackson Oren Gardner appeals from an order of the district court
2 revoking his probation and committing him to the New Mexico Department of
3 Corrections. Initially, we issued a notice proposing to affirm on the merits of all
4 Defendant’s issues. Defendant filed a memorandum in opposition and a motion to
5 amend the docketing statement. We issued a second notice that again proposed to
6 affirm on the original issues, but on different grounds—that Defendant’s first two
7 issues articulate concerns relative to his underlying conviction and may not be raised
8 in this revocation proceeding; they must be addressed in a habeas corpus petition; and
9 they have no bearing on this appeal. In addition, our second notice granted the motion
10 to amend to the extent it asserted that Defendant was not awarded the amount of
11 presentence confinement credit to which he was entitled. Our second notice proposed
12 to reverse in part and remand for a recalculation of the amount of presentence
13 confinement credit that should be credited to Defendant, or, in the alternative, for a
14 clarification explaining how the district court’s calculations are correct.

15 {2} Defendant filed a single-paged response to our second notice that entirely
16 “relies upon the facts and arguments contained in his initial memorandum in
17 opposition” for his original issues and agrees with our proposed reversal and remand
18 for clarification or recalculation of his sentence. [2nd MIO 1] The State also filed a

1 single-paged response to our second notice that does not object to our proposed
2 reversal and remand for recalculating presentence confinement credit. [State MIO 1]

3 {3} Because neither party has come forward with any factual or legal argument to
4 persuade us that the proposed analysis in our second notice was incorrect, we affirm
5 in part and reverse and remand in part for the reasons stated in our second notice. *See*
6 *Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our
7 courts have repeatedly held that, in summary calendar cases, the burden is on the party
8 opposing the proposed disposition to clearly point out errors in fact or law.”); *see also*
9 *State v. Johnson*, 1988-NMCA-029, ¶ 8, 107 N.M. 356, 758 P.2d 306 (stating that
10 when a case is decided on the summary calendar, an issue is deemed abandoned when
11 a party fails to respond to the proposed disposition of that issue).

12 {4} For clarity on remand to the district court, below we restate the reasons for, and
13 limited purpose of, reversal. Defendant argues that he was not given credit for the
14 period from June 8, 2015 to September 4, 2015, or 89 days, during which it appears
15 he was confined. [First MIO 5-6; RP 79-81] The amended order revoking probation
16 does appear to omit this period of incarceration; it recites that Defendant will be given
17 credit only for the period from February 4, 2015 to June 8, 2015, as well as the period
18 from October 29, 2015 to December 16, 2016. [RP 238] However, the amended order
19 is not clear because the mathematics do not add up. Defendant is sentenced to seven

1 years in the custody of the Department of Corrections, and then is given credit for the
2 above two periods of time, which total approximately 17 ½ months. [Id.] Yet the
3 balance of time to be served is stated as five years, one month, and fourteen days. [Id.]
4 Subtracting 17 ½ months from seven years does not yield five years, one month, and
5 fourteen days. Even if the 89 days are added to the credit, making the total credit
6 approximately 20 ½ months, the numbers still do not add up, as seven years minus 20
7 ½ months does not equal five years, one month, and fourteen days. If, however, the
8 total amount of credit given was actually the entire period from February 4, 2015, to
9 December 16, 2016, a period of approximately 22 ½ months, the time left to be served
10 would be approximately five years and one and one-half months, as stated in the
11 amended order. Since the amended order on its face appears to omit the period
12 claimed by Defendant, but may not do so in fact, and since we are unable to discern
13 the basis for the amended order's calculation of the time remaining to be served, we
14 granted the motion to amend to the extent it raised this issue and proposed to reverse.

15 {5} We now reverse and remand for a recalculation of the amount of presentence
16 confinement credit that should be credited to Defendant, or in the alternative a
17 clarification explaining how the district court's calculations are correct, even though
18 the recitation in the amended order does not appear to be correct. We affirm on
19 Defendant's remaining issues based on the analysis in our second notice.

1 {6} **IT IS SO ORDERED.**

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MICHAEL E. VIGIL, Judge

4 **WE CONCUR**

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HENRY M. BOHNHOFF, Judge

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JENNIFER L. ATTREP, Judge