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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-36367

5 **CHARLOTTE BURKHOLDER,**

6 Defendant-Appellant.

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

8 **James Waylon Counts, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender

13 Santa Fe, NM

14 Steven J. Forsberg, Assistant Appellate Defender

15 Albuquerque, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **VIGIL, Judge.**

1 {1} Defendant appeals her convictions for aggravated assault with intent to kill,
2 aggravated battery (deadly weapon), and tampering with evidence. We issued a
3 calendar notice proposing to affirm. Defendant has responded with a memorandum
4 in opposition and a motion to amend the docketing statement. For the reasons
5 discussed below, we hereby deny the motion to amend and affirm the district court
6 judgment.

7 {2} **Motion to Amend:** Defendant has moved to amend the docketing statement to
8 add the issue of whether double jeopardy requires merger of her conviction for
9 aggravated assault with intent to kill and her conviction for aggravated battery (deadly
10 weapon). [MIO 2] *See* Rule 12-208(F) NMRA (providing that the Court may allow
11 an amendment of the docketing statement upon a showing of good cause). As
12 Defendant concedes [MIO 2], her argument is contrary to the holding in *State v.*
13 *Cowden*, 1996-NMCA-051, ¶ 10, 121 N.M. 703, 917 P.2d 972. Accordingly, we deem
14 the issue to be not viable. *See State v. Moore*, 1989-NMCA-073, ¶ 42, 109 N.M. 119,
15 782 P.2d 91, *superseded by rule on other grounds as stated in State v. Salgado*, 1991-
16 NMCA-044, 112 N.M. 537, 817 P.2d 730.

17 {3} **Issue:** Defendant's sole issue in the docketing statement claimed that trial
18 counsel was ineffective. Our calendar notice proposed to hold that she had not
19 established a prima facie showing of ineffective assistance of counsel and, to the

1 extent that Defendant considers the issue to have merit, it is more appropriately
2 addressed in a habeas corpus proceeding. Defendant's memorandum in opposition
3 does not dispute the correctness of our calendar notice. *See State v. Mondragon*, 1988-
4 NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (noting that a party responding to a
5 summary calendar notice must come forward and specifically point out errors of law
6 and fact), *superseded by statute on other grounds as stated in State v. Harris*, 2013-
7 NMCA-031, ¶ 3, 297 P.3d 374

8 {4} For the reasons set forth above, we affirm.

9 {5} **IT IS SO ORDERED.**

10 _____
11 **MICHAEL E. VIGIL, Judge**

12 **WE CONCUR:**

13 _____
14 **JULIE J. VARGAS, Judge**

15 _____
16 **DANIEL J. GALLEGOS, Judge**