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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-36659

5 **RICKY SALAZAR,**

6 Defendant-Appellant.

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

8 **James M. Hudson, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 L. Helen Bennett P.C.

13 L. Helen Bennett

14 Albuquerque, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **ZAMORA, Judge.**

18 {1} Defendant Ricky Salazar appeals from his jury trial convictions for aggravated

19 battery against a household member and criminal trespass in 2001. [DS 2] We issued

1 a notice proposing to summarily affirm, in part, and to summarily dismiss, in part.
2 Defendant filed a memorandum in opposition, pursuant to *State v. Franklin* 1967-
3 NMSC-151, ¶ 9, 78 N.M. 127, 428 P.2d 982, and *State v. Boyer*, 1985-NMCA-029,
4 ¶ 24, 103 N.M. 655, 712 P.2d 1, which we have duly considered. Remaining
5 unpersuaded, we affirm, in part, and dismiss, in part.

6 {2} Defendant first asserts he received an unfair trial because the jury was not
7 impartial. [DS 5] Reviewing Defendant’s unpreserved claim for fundamental error,
8 we proposed to affirm. [CN 3-4] In his memorandum in opposition, Defendant
9 continues to argue that the single general question asked of the venire panel was
10 insufficient to uncover any prejudice related to the excused prospective juror’s
11 statements and to ensure the remaining panel members had not been tainted by those
12 statements. [MIO 3-4] However, Defendant does not explain how this remedial
13 procedure resulted in an unfair trial amounting to fundamental error. “A party
14 responding to a summary calendar notice must come forward and specifically point
15 out errors of law and fact[,]” and the repetition of earlier arguments does not fulfill
16 this requirement. *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759
17 P.2d 1003, *superseded by statute as stated in State v. Harris*, 2013-NMCA-031, 297
18 P.3d 374. We therefore hold Defendant has not demonstrated he received an unfair
19 trial and propose to affirm on that ground.

1 {3} Defendant next asserts the district court erred in denying his Rule 5-803 NMRA
2 petition on timeliness grounds. [DS 5] Noting Defendant was self-represented when
3 his petition was filed and denied, and the *Duran* presumption is not extended to a self-
4 represented Defendant, we proposed to dismiss Defendant's appeal from the denial
5 of his Rule 5-803 petition. [CN 6] In his memorandum in opposition, Defendant
6 argues appellate counsel was appointed in recognition of Defendant's right to appeal
7 his conviction, which he asserts his trial counsel failed to pursue. [MIO 4-5] We
8 understand Defendant to again assert the *Duran* presumption should apply because he
9 was unable to pursue a direct appeal until now. Indeed, we have indulged Defendant
10 with a *Duran* presumption in his direct appeal asserting an unfair trial, but Defendant
11 does not explain why the presumption should apply to appeal from denial of his Rule
12 5-803 petition where he was self-represented. Appellate courts are under no obligation
13 to review unclear or undeveloped arguments. *See State v. Guerra*, 2012-NMSC-014,
14 ¶ 21, 278 P.3d 1031. Defendant also fails to point out specific errors of law and fact.
15 *See Mondragon*, 1988-NMCA-027, ¶ 10. Therefore, we conclude Defendant's appeal
16 from the denial of his Rule 5-803 petition was untimely and must be dismissed.

17 {4} Accordingly, for the reasons explained above and in our notice of proposed
18 disposition, we affirm, in part, and dismiss, in part.

19 {5} **IT IS SO ORDERED.**

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M. MONICA ZAMORA, Judge

3 **WE CONCUR:**

4

5 **J. MILES HANISEE, Judge**

6

7 **HENRY M. BOHNHOFF, Judge**