

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 Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions.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-36989**

5       **DAMIEN MACIAS,**

6           Defendant-Appellant.

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

8       **Kea W. Riggs, District Judge**

9       Hector H. Balderas, Attorney General

10       Santa Fe, NM

11       for Appellee

12       Bennett J. Baur, Chief Public Defender

13       William O'Connell, Assistant Appellate Defender

14       Santa Fe, NM

15       for Appellant

16                                       **MEMORANDUM OPINION**

17       **VIGIL, Judge.**

18       {1}     Defendant Damien Macias appeals from a judgment and sentence rendered

19       pursuant to a plea. We previously issued a notice of proposed summary disposition

1 in which we proposed to dismiss. Defendant has filed a memorandum in opposition.  
2 After due consideration, we remain unpersuaded that this matter is properly before us.  
3 We therefore dismiss.

4 {2} As we previously observed, a guilty or no contest plea generally operates as a  
5 waiver of the right to appeal the resultant conviction(s) and sentence. *State v.*  
6 *Chavarria*, 2009-NMSC-020, ¶ 16, 146 N.M. 251, 208 P.3d 896 (“[T]he constitutional  
7 right to appeal is waivable, and a defendant who knowingly, intelligently, and  
8 voluntarily pleads guilty, waives the right to appeal his conviction and sentence.”). In  
9 his memorandum in opposition Defendant tacitly acknowledges this principle, [MIO  
10 1-2] but maintains that the sentence should be subject to challenge on appeal because  
11 it “exceeded what [he] believes was allowed by the plea agreement.” [MIO 1]  
12 However, the sentence is clearly within the range specified in the plea agreement, [RP  
13 66-67, 79-80] and in any event, Defendant’s argument is not jurisdictional. *See State*  
14 *v. Rudy B.*, 2010-NMSC-045, ¶ 13, 149 N.M. 22, 243 P.3d 726 (observing that “a plea  
15 agreement is simply a contract between the [s]tate and an accused that affects the  
16 rights of the parties but not the court’s jurisdiction”). Accordingly, we remain  
17 unpersuaded that the argument is properly before us. *See id.* ¶¶ 9-10, 18 (observing  
18 that appellate review of a sentence is limited to jurisdictional errors where a defendant

1 does not challenge the validity of a plea agreement itself, and ultimately dismissing  
2 an appeal under analogous circumstances).

3 {3} Finally, to the extent that Defendant seeks to withdraw his plea, [MIO 1-2] that  
4 question appears to remain pending before the district court [RP 179], and we remain  
5 unpersuaded that it is properly before us. *See State v. Trammell*, 2016-NMSC-030, ¶  
6 15, 387 P.3d 220 (observing, in a case where the defendant moved to withdraw his  
7 plea six years after the entry of the judgment and sentence, that the motion might have  
8 been properly treated by the district court as a petition for habeas corpus relief under  
9 Rule 5-802 NMRA; and thus, when the district court ruled on the motion, the ensuing  
10 appeal should have been to the Supreme Court).

11 {4} Accordingly, for the reasons stated above and in the notice of proposed  
12 summary disposition, we dismiss.

13 {5} **IT IS SO ORDERED.**

14 \_\_\_\_\_  
15 **MICHAEL E. VIGIL, Judge**

16 **WE CONCUR:**

17 \_\_\_\_\_  
18 **J. MILES HANISEE, Judge**

1

2 **JENNIFER L. ATTREP, Judge**