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6 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

7 **STATE OF NEW MEXICO,**

8 Plaintiff-Appellee,

9 v.

**NO. 30,799**

10 **LORENZO AGUILERA,**

11 Defendant-Appellant.

12 **APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY**

13 **Lisa C. Schultz, District Judge**

14 Gary K. King, Attorney General

15 Santa Fe, NM

16 for Appellee

17 Chief Public Defender

18 Kimberly Chavez Cook, Assistant Appellate Defender

19 Santa Fe, NM

20 for Appellant

21 **MEMORANDUM OPINION**

22 **KENNEDY, Judge.**

23 Defendant appeals the district court's order setting Defendant's case for bench

24 trial and denying Defendant's appeal from a magistrate court order rejecting his

1 request for a jury trial. [RP 82] We issued a calendar notice proposing to dismiss the  
2 appeal because it appears a final order was never entered in magistrate court.  
3 Defendant filed a memorandum in opposition. We remain persuaded as to the  
4 proposed outcome and dismiss the appeal for the reasons stated in the calendar notice.

5         In his memorandum in opposition, Defendant urges this Court to reach the  
6 merits of Defendant’s appeal. He argues Defendant’s appeal should not be postponed  
7 merely to satisfy the technical requirement of a written order. While we acknowledge  
8 we are concerned by the implication to Defendant of the apparent practice of  
9 postponing the sentencing phase in cases of conditional pleas in some magistrate  
10 courts, we decline to make an exception as to the requirement of a final written order  
11 in this case.

12         As more fully outlined in our calendar notice, the long-standing rule in New  
13 Mexico is that in criminal cases, “the judgment is final for the purpose of appeal when  
14 it terminates the litigation on the merits and leaves nothing to be done but  
15 [enforcement] . . . . A sentence must be imposed to complete the steps of the  
16 prosecution.” *State v. Durant*, 2000-NMCA-066, ¶ 5, 129 N.M. 345, 7 P.3d 495  
17 (alteration in original) (emphasis omitted) (internal quotation marks and citations  
18 omitted). Therefore, the final judgment in criminal cases “either adjudicates the  
19 defendant guilty and imposes, suspends, or defers sentence or dismisses the charges.”

1 *Id.*; see also *State v. Celusniak*, 2004-NMCA-070, ¶ 14, 135 N.M. 728, 93 P.3d 10  
2 (reiterating that the final judgment in a criminal case either convicts the defendant of  
3 a criminal offense and imposes, suspends, or defers sentence or dismisses the charges  
4 against the defendant). This is not a requirement that is litigated on a case-by-case  
5 basis. *State v. Lohberger*, 2008-NMSC-033, ¶ 22, 144 N.M. 297, 187 P.3d 162.

6 We therefore dismiss the appeal for lack of a final order. Once a final order has  
7 been entered, Defendant may appeal in accordance with our Rules of Appellate  
8 procedure.

9 **IT IS SO ORDERED.**

10 \_\_\_\_\_  
11 **RODERICK T. KENNEDY, Judge**

12 **WE CONCUR:**

13 \_\_\_\_\_  
14 **LINDA M. VANZI, Judge**

15 \_\_\_\_\_  
16 **TIMOTHY L. GARCIA, Judge**