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

7 **STATE OF NEW MEXICO,**

8 Plaintiff-Appellant,

9 v.

NO. 30,990

10 **BYRON CUSTER,**

11 Defendant-Appellee,

12 **APPEAL FROM THE DISTRICT COURT OF MCKINLEY COUNTY**

13 **Grant L. Foutz, District Judge**

14 Gary K. King, Attorney General
15 Andrea Sassa, Assistant Attorney General
16 Santa Fe, NM

17 for Appellant

18 Steven F. Seeger
19 Gallup, NM

20 for Appellee

21 **MEMORANDUM OPINION**

22 **VIGIL, Judge.**

23 The State appeals dismissal of charges against Defendant. In our notice, we

1 proposed to affirm the dismissal. The State has responded that it does not contest our
2 proposal.

3 Therefore, for the reasons stated in our notice, we affirm.

4 **IT IS SO ORDERED.**

5
6 **MICHAEL E. VIGIL, Judge**

7 **WE CONCUR:**

8
9 **JONATHAN B. SUTIN, Judge**

10
11 **TIMOTHY L. GARCIA, Judge**