

[Signature]
FILED
12th JUDICIAL DISTRICT COURT
Otero County, Reynolds
9/20/2019 11:02 AM
KATINA WATSON
CLERK OF THE COURT
Ian Bolinger

STATE OF NEW MEXICO
COUNTY OF OTERO
TWELFTH JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO,

Plaintiff,

A-1-CA-38086

vs,

No. D-1215-CR-201700217
Judge James Waylon Counts

BRADLEY R. FREEMAN,

Defendant.

**ORDER DENYING DEFENDANT'S
MOTION TO WITHDRAW PLEA**

THIS MATTER having come before the Court upon the Defendant's Motion to Withdraw Plea, and the Court being sufficiently advised in the premises;

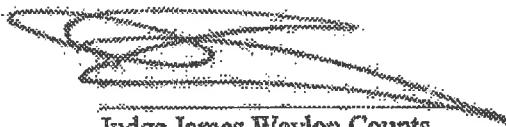
THE COURT HEREBY FINDS that:

1. The defendant pled guilty and admitted that he transferred controlled substances for profit.
2. No pretrial motion claiming entrapment was raised/filed by the defense;
3. The defendant did not seek to withdraw his plea until after he had been sentenced, placed on probation, found to have violated his conditions of probation and sentenced for violating his probation;
4. Without calling any witnesses at the hearing, the defense proffered that:
 - a. the defendant consumed controlled substances with Josh Marchland;
 - b. Marchland pressured the defendant to sell controlled substances;
 - c. The defendant was not otherwise disposed to commit the crime;
 - d. Thus, the defendant knew he had an entrapment defense to the charges;



5. Even knowing the above-listed information, the defendant, with counsel, chose to accept a plea offered by the State; and
6. Having established that his decision to plea guilty was made after a risk/benefit analysis, the defendant should not now be allowed to withdraw his plea.

IT IS HEREBY ORDERED that the defendant's motion is not well taken and is hereby denied.



Judge James Waylon Counts
District Judge

Respectfully Submitted by,



James A. Dickens
Chief Deputy District Attorney

Approved as to form by,

via email on 9/10/2019

Michael Tighe
Counsel for the Defendant

INV-FREEMAN SO-28-17

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STATE OF NEW MEXICO
COUNTY OF OTERO
TWELFTH JUDICIAL DISTRICT

DISTRICT COURT OF
OTERO COUNTY, N.M.
18 OCT 19 PM 4:54

STATE OF NEW MEXICO,

Plaintiff,

Cause No: D-1215-CR-2017-00217

District: II

Vs.

Ym
DOCKETED

BRADLEY FREEMAN,
Defendant,

DEFENDANT'S MOTION TO WITHDRAW PLEA

COMES NOW Defendant, Bradley Freeman, through his counsel, and moves the Court for an order allowing Mr. Freeman to withdraw his plea. As grounds, Defendant respectfully states the following:

1. On January 26, 2018, Defendant pled guilty to Distribution of a Controlled Substance pursuant to a plea agreement;
2. The plea agreement included the representation by the State that if he were to plead guilty, the State would not oppose a suspended sentence;
3. New information regarding the State's primary witness, Joshua Marchand was disclosed by the State on August 13, 2018 in the form of a Nolle filed in numerous cases with other Defendant's who had not pled or gone to trial;
4. The Nolle included detailed information regarding Marchand's methods, including his using drugs with people who were then indicted on drug charges as well as concerns from law enforcement officers regarding his handling of evidence and other such issues. Exhibit A.

WHEREFORE, Defendant, respectfully moves the Court to withdrawal his guilty plea.

Respectfully Submitted:

Debora Gerads
Public Defender

CERTIFICATION

I hereby certify that I have forwarded a true and accurate copy of the foregoing pleading to the office of the District Attorney.

Carley Williams
PUBLIC DEFENDER DEPARTMENT

STATE OF NEW MEXICO
COUNTY OF OTERO
TWELFTH JUDICIAL DISTRICT COURT

FILED
DISTRICT COURT OF
OTERO COUNTY, N.M.
18 AUG 13 AM 9:40

STATE OF NEW MEXICO,

Plaintiff,
vs.

CORY WAYNE KESSLER,

D-1215-CR-2017-00229
DIV IV

Defendant.

*jm
DOC'D*

NOLLE PROSEQUI

The State of New Mexico, by and through District Attorney John P. Sugg enters a *Nolle Prosequi* in the above-referenced cause number for the following reasons:

Numerous defendants have alleged that Deputy Joshua Marchand, the case agent in the above-referenced cause number, used drugs with them either before or during his employment with the Otero County Sheriff's Office (OCSO). Of specific concern to the State are the allegations that Deputy Marchand used drugs during his employment as an undercover detective working for OCSO. If true, the use of illicit narcotics by an undercover detective with a suspect would in all likelihood be considered objective entrapment under New Mexico law.

One of the individuals who claims that Deputy Marchand used methamphetamine while Deputy Marchand was an undercover detective is Cory Kessler. Mr. Kessler was indicted in D-1215-CR-2017-00229 on one count of Trafficking a Controlled Substance, to wit: Methamphetamine (By Distribution) for allegedly selling Deputy Marchand .6 grams of methamphetamine on April 24, 2017 (OCSO File No. SO-063-17). The OCSO also provided a report related to Mr. Kessler allegedly selling methamphetamine on April 10, 2017 (OCSO File No. SO-044-17), but that transaction was not charged. Mr. Kessler has maintained that he had a third additional contact with deputy Marchand after April 24, 2017, and that he smoked methamphetamine with Deputy Marchand in Deputy Marchand's tattoo shop.

Mr. Kessler submitted to a polygraph examination through the FBI on April 27, 2018. Mr. Kessler initially stated that he "visually saw" Deputy Marchand smoke methamphetamine in 2017. Mr. Kessler's answers in a subsequent polygraph examination indicated he was being deceptive. When confronted with the results of the polygraph, Mr. Kessler stated that his view was partially obstructed because Deputy Marchand was in a small bathroom in Deputy Marchand's tattoo shop. He stated that while he could not see Deputy Marchand "visually" inhale the methamphetamine, he saw Deputy Marchand go into the bathroom with the same meth pipe he had just smoked, and he saw smoke coming up from the mirror.



Prior to the polygraph examination, Mr. Kessler's attorney, Assistant Public Defender James Plummer, conducted a pretrial interview with Deputy Marchand on February 13, 2018. During the interview, Mr. Plummer confronted Deputy Marchand with Mr. Kessler's allegations that Mr. Kessler used methamphetamine with Deputy Marchand. Deputy Marchand responded to the allegations by stating that he had simulated drug use in front of Mr. Kessler. This was the first time Deputy Marchand had revealed that he had simulated drug use during an undercover operation to the District Attorney's Office. None of the law enforcement incident reports provided to the District Attorney's Office prior to this date included any mention of simulated drug use.

Following the polygraph examination of Mr. Kessler, the FBI served a subsequent grand jury subpoena on OCSO demanding all reports documenting simulated drug use by Deputy Marchand. When OCSO provided the return of the documents to the FBI, there was an incident report bearing OCSO File No. SO-063-17 in reference to Mr. Kessler. This report details an interaction occurring on April 25, 2017 in which Deputy Marchand reports simulating drug use in front of Mr. Kessler.

The FBI had previously served a federal grand jury subpoena to the OCSO demanding disclosure of any and all law enforcement incident reports in which Deputy Marchand was listed as a witness or the subject of an investigation. The FBI served that grand jury subpoena on July 24, 2017, and the OCSO provided the returns to the FBI on August 8, 2017. The OCSO purportedly provided all reports in which Deputy Marchand was either a witness or the subject in an OCSO case to the FBI. The report for OCSO File No. SO-063-17 detailing the April 25, 2017 incident was not disclosed to the FBI as part of the return for the July federal grand jury subpoena.

Prior to seeking an indictment against Mr. Kessler, the District Attorney's Office requested OCSO to provide any and all law enforcement incident reports related to Deputy Marchand's undercover work to be submitted to the DA's Office for review. The District Attorney's Office has no record of ever receiving the report for OCSO File No. SO-063-17 which details the April 25, 2017 incident with Mr. Kessler.

Mr. Kessler's polygraph examination indicated he was being deceptive when he stated he visually saw Deputy Marchand inhale methamphetamine. However, Mr. Kessler's subsequent statement is consistent with Deputy Marchand's account detailed in OCSO File No. SO-063-17. In order to clarify the incident with Deputy Marchand, the FBI attempted to interview Deputy Marchand. Deputy Marchand initially agreed to be interviewed, but he subsequently retained counsel, Mr. Steven Sanders, Esq., to represent him. Upon the advice of counsel, Deputy Marchand refused to be interviewed by the FBI.

Numerous other defendants have claimed that Deputy Marchand used drugs with them while he worked as an undercover detective for OCSO. Other accounts from law enforcement officers have raised concerns over the handling of evidence, evidence going missing, problems with the chain of custody for evidence, and possible alcohol intoxication by Deputy Marchand while

working undercover. These reports have been received by the District Attorney's Office and will be disclosed to the defense attorney in this case along with this dismissal pursuant to the State's obligations under *Giglio v. United States*, 405 U.S. 150 (1972) and *Brady v. Maryland*, 373 U.S. 83 (1963).

After the FBI provided numerous reports to the District Attorney's Office regarding Deputy Marchand, undersigned counsel contacted Deputy Marchand's attorney on June 19, 2018. Undersigned counsel asked whether Deputy Marchand would agree to submit to a polygraph examination from an independent third party to clarify numerous concerns raised by the FBI's reports. Undersigned counsel also sought to determine whether Deputy Marchand would invoke his right to counsel or his right to remain silent if he was called to testify at trial and questioned about the aforementioned accusations related to his drug use as an undercover detective. Mr. Sanders acknowledged receipt of the email, and he stated he would speak with his client and get back to undersigned counsel with an answer to both questions.

The District Attorney's Office did not hear back from Mr. Sanders so undersigned counsel sent a follow up email on July 3, 2018. No response was received to the follow up email. On July 11, 2018, undersigned counsel sent an additional followup email requesting an answer no later than Friday, July 13, 2018. Undersigned counsel explained that the State needed an answer by that date because the state needed to prepare for upcoming trials. Undersigned counsel advised that the State would have to assume that Deputy Marchand was declining our request that he submit to a polygraph examination and/or would invoke his right to remain silent if questioned about the allegations he used controlled substances while working as an undercover detective if no response was received by July 13, 2018. To date, the State has not received a reply from Mr. Sanders. Consequently, the State must assume that Deputy Marchand will not submit to a polygraph examination and/or if he is questioned about the aforementioned accusations, Deputy Marchand would invoke his right to remain silent.

The accusations against Deputy Marchand are serious. Without him submitting to a polygraph examination, significant questions remain as to the validity of the accusations made by multiple defendants. "State and federal courts have frequently said that police conduct violates due process when it is outrageous,...offends notions of fundamental fairness,...violates principles of fair and honorable administration of justice,...or shocks the conscience." *State v. Vallejos*, 1997-NMSC-040, ¶ 17, 123 N.M. 739, 945 P.2d 957(internal citations omitted). And "[w]hile police may engage in some degree of deception in their efforts to detect certain sorts of crime that are difficult to detect otherwise, police may not employ unconscionable methods in their attempts to ferret out crime." *Id.* at ¶ 18. "[E]ntrapment law in this and other jurisdictions leads us to the inescapable conclusion that police on occasion have engaged in conduct that might not ensnare the ordinary person but nevertheless exceeds the standards of proper investigation and violates substantive due process." *Id.* at ¶ 15. If the allegations made against Deputy Marchand are true, his actions would likely constitute objective entrapment.

Moreover, a prosecutor is not permitted to call a witness before a jury when the prosecutor knows that the witness will invoke his right to remain silent or his right to counsel. *See State v. Henderson*, 2006-NMCA-059, ¶ 26, 139 N.M. 595, 136 P.3d 1005. The State is aware that when the FBI sought to question Deputy Marchand about these allegations, he invoked his right to counsel and subsequently invoked his right to remain silent.

The State has not been able to ascertain whether Deputy Marchand would invoke his right to counsel or his right to remain silent before the jury if called to testify. Without a good faith basis to believe Deputy Marchand would answer the questions posed to him while testifying, the State cannot call Deputy Marchand as a witness. There is insufficient evidence to obtain a conviction in this case without Deputy Marchand's testimony.

Additionally, the FBI investigation revealed that Deputy Marchand has provided inconsistent statements related to his prior drug use. On September 29, 2017, the FBI served a federal grand jury subpoena on OCSO requesting all personnel records for Deputy Joshua Marchand. When the FBI received the return from OCSO, there was not an employment application for Deputy Marchand from Otero County.

On April 30, 2018, the FBI served a subsequent federal grand jury subpoena on the OCSO and an additional subpoena on the Otero County Human Resources Division. The County of Otero Human Resource Division did not have an employment application on file for Deputy Marchand. The OCSO returned a letter by Deputy Preston Eldridge stating that Deputy Marchand's original employment application which was completed in June 2016 was lost and that the OCSO subsequently made him complete a second employment application dated August 1, 2017. It should be noted that the August 1, 2017, application presumably existed when the September 2017 federal grand jury subpoena was served, but it was not included with OCSO's return for unknown reasons.

The actual August 1, 2017 employment application was included in the return to the FBI in response to the April 30, 2018 federal grand jury subpoena. That employment application contains answers related to Deputy Marchand's prior drug use. Those responses are inconsistent with the Revised Social History Questionnaire that Deputy Marchand provided to the Law Enforcement Academy which was obtained by the FBI as part of a separate grand jury subpoena. Further, both the Revised Social History Questionnaire and the August 1, 2017 employment application provide information regarding Deputy Marchand's prior drug use that is inconsistent with statements made by Deputy Marchand to undersigned counsel and Chief Deputy District Attorney Scot Key in a meeting held before indictments were sought in Deputy Marchand's cases.

The County of Otero Human Resource Office subsequently provided the FBI with two versions of an employment application for Deputy Marchand that were completed in May 2018. The Human Resource Director had Deputy Marchand complete the employment applications after she discovered the Human Resources Office did not have an employment application on file for

Deputy Marchand. The first application was completed by Deputy Marchand at the HR Office. Deputy Marchand subsequently returned to the HR Office and asked to amend his employment application. Copies of the original and amended employment applications were provided to the FBI. The portion on the application regarding prior drug use had been altered when amended and contained numerous scratched through answers. The scratched through answers are also inconsistent with the other documents detailed above.

In an employment application dated August 1, 2017 which was disclosed pursuant to a federal grand jury subpoena, Deputy Marchand disclosed he previously used marijuana and other "dangerous drugs or narcotic" a "few" times in 2001. In the application dated May 10, 2018, which was provided to the Human Resources Director for Otero County, Deputy Marchand disclosed marijuana use 10 times in 2000 and use of "dangerous drugs or narcotic" 1 to 3 times. That employment application was later amended by Deputy Marchand to state "dangerous drugs or narcotic" use was a few times with the most recent date occurring in 2011. In the Revised Social History Questionnaire and the Employment Application, Deputy Marchand denied all drug with the exception of marijuana use limited to a few times in 2001. Deputy Marchand detailed additional drug use to undersigned counsel and Chief Deputy District Attorney Scot Key.

Another Defendant named Paul Marzan submitted to a polygraph examination administered by the FBI. Mr. Marzan stated that he used illegal drugs with Deputy Marchand in 2014 and 2015. Mr. Marzan passed the polygraph with no deception being indicated. Mr. Marzan's account of Deputy Marchand's prior drug use is inconsistent with all other previously reported drug use by Deputy Marchand in that the most recent drug use previously reported by Deputy Marchand occurred in 2011.

The FBI also discovered other inconsistencies related to Deputy Marchand's prior employment history on the Revised Social History Questionnaire. Specifically, Deputy Marchand reported never being terminated from employment for cause. Subsequent FBI investigation revealed Deputy Marchand had previously been terminated from prior employment.

Rule 16-303(A)(3) of the Rules of Professional Responsibility prohibit a lawyer from knowingly "offer[ing] evidence that the lawyer knows to be false; if a lawyer, the lawyer's client or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal; a lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false."

Based on the documents provided to the State by the FBI, prior statements made by Deputy Marchand, and Mr. Marzan's statement, it appears Deputy Marchand has provided numerous false statements related to his prior drug use. The State cannot call Deputy Marchand as a witness unless it has a good faith basis to believe what Deputy Marchand is testifying to is truthful. Since Deputy Marchand has declined to submit to a polygraph, the State is not willing to call Deputy

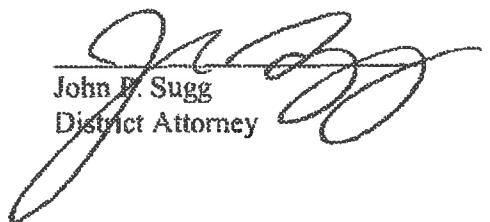
Marchand as a witness in the above-referenced cause number.

Prosecutors are quasi-judicial officers who have the distinctive role of disinterested and impartial public advocates. *State v. Gonzales*, 2005-NMSC-025, ¶¶ 35-36, 138 N.M. 271, 119 P.3d 151. District attorneys are constitutionally mandated, elected state officials, who derive their authority from the people who entrust them with the “very question of what charges to bring and what people to prosecute in the best interest . . . of the State of New Mexico.” *State v. Brule*, 1999-NMSC-026, ¶ 14, 127 N.M. 368, 981 P.2d 782 (internal citation omitted); *see also* N.M. Const. art. VI, § 24 (mandating the election of a district attorney for each judicial district); § 36-1-18(A), NMSA 1978 (listing the duties of the district attorneys). In addition to representing the public interest, a prosecutor must also protect the rights of the accused and maintain impartiality. *See State v. Hill*, 1975-NMCA-093, ¶ 14, 88 N.M. 216, 539 P.2d 236.

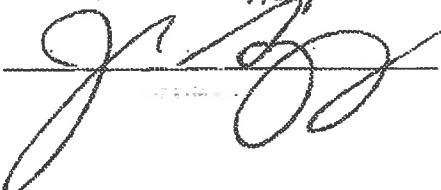
While the evidence against the subjects accused of trafficking drugs to Deputy Marchand while he was an undercover detective is compelling, there are serious concerns about the veracity of Deputy Marchand. The State acknowledges that some guilty defendants will go free as a result of these dismissals, but there is no way to determine which defendants were potentially entrapped and which defendants were merely given an opportunity to commit a crime they would otherwise commit in the absence of law enforcement. Under the special role of a prosecutor, this matter must be dismissed to avoid the possibility of convicting a potentially innocent person.

For the foregoing reasons, the State of New Mexico hereby dismisses the complaint in the above-referenced cause number as it is in the best interest of justice.

Respectfully Submitted,


John E. Sugg
District Attorney

I hereby certify that a copy of
the foregoing was sent to the
counsel for the Defendant
on the 13th day of August, 2018.



IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico
Filed 3/24/2020 11:35 AM

STATE OF NEW MEXICO,

Plaintiff-Appellee,

V.

No. A-1-CA-38086

Otero County

D-1215-CR-2017-00217

BRADLEY FREEMAN.

Defendant-Appellant.

TRANSFER ORDER

This matter comes before the Court on its own motion. *See generally Martinez v. Chavez*, 2008-NMSC-021, ¶ 14, 144 N.M. 1, 183 P.3d 145 (observing parenthetically that it is incumbent upon the appellate courts to raise jurisdictional concerns *sua sponte*).

Defendant seeks to appeal from an order denying a motion to withdraw a guilty plea. We are concerned that the ruling on that motion is not properly before us.

Defendant's motion was filed within thirty days after the district court entered an order in association with a probation revocation proceeding, by which it revoked Defendant's probation and conditional discharge. [RP 120, 123] That disposition was predicated upon Defendant's plea of no contest to violation of the terms and conditions of his probation. [RP 117]

1 If by his motion Defendant had sought to withdraw his no contest plea, our
2 jurisdiction would not be in doubt. *See State v. Peppers*, 1990-NMCA-057, ¶ 15, 110
3 N.M. 393, 796 P.2d 614 (“A motion to withdraw a [] plea made within thirty days of
4 judgment comes within the terms of [NMSA 1978,] Section 39-1-1 [(1953)]”.

5 However, by his motion Defendant did not seek to withdraw his no contest plea.
6 Instead, he sought to withdraw his plea of guilty to the offense originally charged. [RP
7 123] That plea was entered, and the associated order of conditional discharge was
8 filed, approximately ten months earlier. [RP 71, 78]

9 The conditional discharge order was final and appealable when entered. *See*
10 *State v. Durant*, 2000-NMCA-066, 129 N.M. 345, 7 P.3d 495 (holding that a
11 conditional discharge order in a felony prosecution is sufficiently final as to be
12 appealable). Given that the motion to withdraw the guilty plea not filed within thirty
13 days after the entry of the conditional discharge order, the motion to withdraw plea
14 does not, in our estimation, fall within with auspices of NMSA 1978, Section 39-1-1
15 (1953) (providing that the trial courts have jurisdiction for thirty days after entry of
16 judgment and for such further time as may be necessary to pass on a motion directed
17 to the judgment and filed within such period).

18 Under the circumstances, we regard the motion to withdraw plea as a habeas
19 petition. *See, e.g., State v. Trammell*, 2016-NMSC-030, ¶ 15, 387 P.3d 220 (indicating

1 that a post-conviction motion to withdraw a plea filed in connection with probation
2 revocation proceedings, which was directed at a plea entered years earlier relative to
3 the original offense, should have been regarded as a petition for habeas corpus relief).

4 *See generally Martinez v. Chavez*, 2008-NMCA-071, ¶ 7, 144 N.M. 166, 184 P.3d
5 1060 (“Generally, where a final conviction is being attacked in a collateral
6 proceeding, it is considered a habeas corpus proceeding . . . [o]ur Supreme Court has
7 recognized that almost all post-conviction requests for relief are, in substance,
8 petitions for habeas corpus relief, with the only exceptions being motions for new trial
9 or for modification of a sentence.”).

10 In light of the foregoing considerations, it appears that the above-captioned
11 appeal should have been filed and docketed in the Supreme Court. *See Rule 5-*
12 802(N)(2) NMRA (providing that if the writ of habeas corpus is denied, a petition for
13 certiorari may be filed with the Supreme Court); *Cummings v. State*,
14 2007-NMSC-048, ¶ 1, 142 N.M. 656, 168 P.3d 1080 (reaffirming that the Supreme
15 Court has exclusive jurisdiction over the review of habeas corpus proceedings).

16 Under these circumstances, the Supreme Court has indicated that transfer is the
17 most appropriate course of action, to ensure that the merits can be heard. *See*
18 *Martinez*, 2008-NMSC-021, ¶ 15.

1 **IT IS THEREFORE ORDERED** that this case is transferred to the Supreme
2 Court pursuant to Rule 12-606 NMRA and Rule 5-802(N)(2).

3 
4 JULIE J. VARGAS, Judge

5 
6 KRISTINA BOGARDUS, Judge

1 **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2 **April 17, 2020**

3 **NO. S-1-SC-38222**

4 **STATE OF NEW MEXICO,**

5 Plaintiff-Respondent,

6 v.

7 **BRADLEY FREEMAN,**

8 Defendant-Petitioner.

9 **ORDER**

10 WHEREAS, this matter came on for consideration by the Court upon a
11 transfer order from the New Mexico Court of Appeals treating this matter as
12 proceeding under Rule 12-501 NMRA, and the Court having considered the
13 transfer order and record in the Court of Appeals and being sufficiently advised,
14 Justice Michael E. Vigil, Justice C. Shannon Bacon, and Justice David K.
15 Thomson concurring;

16 NOW, THEREFORE, IT IS ORDERED that the transfer is ACCEPTED as
17 a Rule 12-501 NMRA proceeding, and all documents filed in Court of Appeals
18 cause numbered A-1-CA-38086 shall be treated as filed in this proceeding under
19 Rule 12-606 NMRA;

20 IT IS FURTHER ORDERED that the memorandum in opposition to

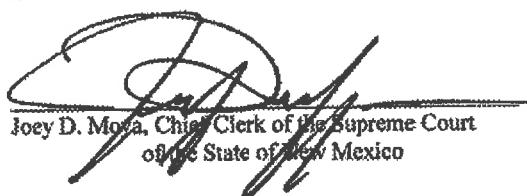
1 proposed summary dismissal filed by Defendant in the Court of Appeals on
2 October 7, 2019, shall be treated as a petition for a writ of certiorari under Rule 12-
3 501 NMRA; and

4 IT IS FURTHER ORDERED that a response to the petition shall be timely
5 if filed on or before **May 04, 2020**.

6 IT IS SO ORDERED.



7 WITNESS, the Honorable Judith K. Nakamura,
Chief Justice of the Supreme Court of the State of
New Mexico, and the seal of said Court this 17th
day of April, 2020.



Joey D. Moya, Chief Clerk of the Supreme Court
of the State of New Mexico

I CERTIFY AND ATTEST:

A true copy was served on all parties
or their counsel of record on date filed.

Joey D. Moya
Chief Clerk of the Supreme Court
of the State of New Mexico

NO. S-1-SC-38222

STATE OF NEW MEXICO,

Plaintiff-Respondent,

V.

BRADLEY FREEMAN,

Defendant-Petitioner.

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for writ of certiorari and response filed under Rule 12-501 NMRA, and the Court having considered the foregoing and being sufficiently advised, Justice Michael E. Vigil, Justice C. Shannon Bacon and Justice David K. Thomson concurring:

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is
DENIED

IT IS SO ORDERED



WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 13th day of May, 2020.

Joey D. Moya, Clerk of Court
Supreme Court of New Mexico

By Madeline Gracia
Chief Deputy Clerk

I CERTIFY AND ATTEST:

A true copy was served on all parties or their counsel of record on date filed.

Madeline Garcia

**Clerk of the Supreme Court
of the State of New Mexico**

4 NO. S-1-SC-38222

6 STATE OF NEW MEXICO,

8 Plaintiff-Respondent,

10 | v.

12 BRADLEY FREEMAN,

14 | Defendant-Petitioner.

ORDER

16 WHEREAS, this matter came on for consideration by the Court upon motion
17 for rehearing and brief in support, and the Court having considered the foregoing and
18 being sufficiently advised; Justice Michael E. Vigil, Justice C. Shannon Bacon and
19 Justice David K. Thomson concurring:

20 NOW, THEREFORE, IT IS ORDERED that the motion for rehearing is hereby
21 DENIED.

22 IT IS SO ORDERED.



WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 12th day of June, 2020.

Joey D. Moya, Clerk of Court
Supreme Court of New Mexico

By Madeline Garcia
Chief Deputy Clerk

I CERTIFY AND ATTEST:

**Clerk of the Supreme Court
of the State of New Mexico**