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5 filing date.

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

7 **STATE OF NEW MEXICO,**

8 Plaintiff-Appellee,

9 v.

NO. 29,906

10 **GERALD RAY ZUNIGA,**

11 Defendant-Appellant.

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

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

14 Gary K. King, Attorney General

15 Santa Fe, NM

16 Max Shepherd, Assistant Attorney General

17 Albuquerque, NM

18 for Appellee

19 Hugh W. Dangler, Chief Public Defender

20 Santa Fe, NM

21 Loni J. Hodge, Assistant Public Defender

22 Las Cruces, NM

23 for Appellant

24 **MEMORANDUM OPINION**

25 **BUSTAMANTE, Judge.**

1 Defendant has appealed from the revocation of his probation, challenging the
2 sufficiency of the evidence to support the enhancement of his sentence pursuant to
3 NMSA 1978, Section 31-18-17 (2003). We issued a notice of proposed summary
4 disposition, proposing to reverse and remand for resentencing. The State has filed a
5 responsive document entitled "Memorandum in Opposition," which expresses no
6 opposition to our proposal to reverse for want of an adequate showing below, and
7 which expresses agreement with our proposal to remand for resentencing.

8 Accordingly, for the reasons stated, we reverse and remand for resentencing.

9 **IT IS SO ORDERED.**

10 _____
11 **MICHAEL D. BUSTAMANTE, Judge**

12 **WE CONCUR:**

13 _____
14 **RODERICK T. KENNEDY, Judge**

15 _____
16 **LINDA M. VANZI, Judge**