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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v. **NO. 31,214**

JOSEPH TRAEGER,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY
George P. Eichwald, District Judge

Gary K. King, Attorney General
Santa Fe, NM

for Appellee

Joseph Traeger
Plantation, FL

Pro Se Appellant

MEMORANDUM OPINION

VANZI, Judge.

Defendant appeals, pro se, from a district court order denying his motion for early release from probation. We issued a calendar notice proposing to dismiss. Defendant has responded with a memorandum in opposition. We dismiss the appeal.

As indicated, Defendant is appealing from a district court order denying his motion for early release from probation and clarifying the status of his probationary term. The order was filed on February 16, 2011. [RP 339] The notice of appeal was filed late, on March 24, 2011. [RP 341] As our Supreme Court has observed, "[o]nly the most unusual circumstances beyond the control of the parties—such as error on the part of the court—will warrant overlooking procedural defects." *Trujillo v. Serrano*, 117 N.M. 273, 278, 871 P.2d 369, 374 (1994). Our calendar notice observed that Defendant's circumstances were not exceptional because he had plenty of time to file a timely notice of appeal. In his memorandum in opposition, Defendant points out that he received a copy of the order just days before the notice of appeal was due. However, he could either have quickly filed his appeal, or requested an extension of time pursuant Rule 12-201(E)(1) or (2) NMRA. As such, the circumstances were not beyond his control, and we dismiss the appeal. *See Govich v. North Am. Sys., Inc.*, 112 N.M. 226, 230, 814 P.2d 94, 98 (1991) (compliance with notice of appeal time and place requirements are mandatory preconditions to exercise of appellate jurisdiction).

IT IS SO ORDERED.

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LINDA M. VANZI, Judge

WE CONCUR:

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RODERICK T. KENNEDY, Judge

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MICHAEL E. VIGIL, Judge