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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v. NO. 31,109

CHANCE BENTRY ROBERTS,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY
Mike Murphy, District Court Judge

Gary K. King, Attorney General
Andrew S. Montgomery, Assistant Attorney General
Santa Fe, NM

for Appellee

Jacqueline Cooper, Acting Chief Public Defender
Will O'Connell, Assistant Appellate Defender
Santa Fe, NM

Robert E. Tangora LLC
Robert E. Tangora
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

VIGIL, Judge.

Defendant appeals the district court's ex parte order of unsatisfactory discharge from probation. In our notice, we proposed to reverse and remand for issuance of an order of satisfactory discharge. In response, the State and Defendant have filed a joint motion to adopt the proposed disposition with the modification that instead of remand for issuance of an order of satisfactory discharge, the remand should be for dismissal of the charge.

We agree that the appropriate remedy in this case is dismissal pursuant to NMSA 1978, Section 31-20-9 (1963). This section applies to deferred sentences and their expiration. Thus, "[w]henever the period of deferment expires, the defendant is relieved of any obligations imposed on him by the order of the court and has satisfied his criminal liability for the crime, [and] the court shall enter a dismissal of the criminal charges."

Here, based on the reasoning in the calendar notice, the period of deferment expired without entry of an order imposing sentence. Therefore, Defendant is entitled

to have the charges against him dismissed. This case is reversed and remanded for entry of an order of dismissal of the charges.

IT IS SO ORDERED.

MICHAEL E. VIGIL, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

TIMOTHY L. GARCIA, Judge