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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v. **NO. 31,318**

SHANNON WEINBERGER,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Denise Barela-Shepherd, District Judge

Gary K. King, Attorney General
Santa Fe, NM
Jacqueline R. Medina, Assistant
Albuquerque, NM

for Appellee

Jacqueline L. Cooper, Acting Chief Public Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

WECHSLER, Judge.

Defendant appeals her sentence and argues that the district court erred in

allowing the State to pursue habitual offender proceedings because the State did not present sufficient evidence of a violation of the plea agreement. We issued a calendar notice in which we proposed summary reversal on July 26, 2011. The State has responded with a timely memorandum in response to the notice of proposed summary reversal.

In this case, the district court determined that Defendant violated her conditions of release, and therefore the State could seek a habitual offender enhancement under the plea agreement. **[DS 4, State's response 4]** In our notice of proposed summary disposition, we proposed to reverse the district court in part because the plea agreement, by its terms, did not contemplate that habitual offender proceedings could be initiated based on a violation of Defendant's conditions of release. **[CN 4-5]** In its response, the State agrees that the plea agreement did not permit enhancement of Defendant's sentence for a violation of her conditions of release and that the enhancement of Defendant's sentence should be reversed. **[State's response 4, 8]** Accordingly, we reverse the district court on this basis.

IT IS SO ORDERED

JAMES J. WECHSLER, Judge

WE CONCUR:

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CYNTHIA A. FRY, Judge

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MICHAEL E. VIGIL, Judge