This memorandum opinion was not selected for publication in the New Mexico Reports. Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions. Please also note that this electronic memorandum opinion may contain computer-generated errors or other deviations from the official paper version filed by the Court of Appeals and does not include the filing date.

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v. **NO. 31,406**

CIPRIANO BOTELLO,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY
Lisa C. Schultz, District Judge

Gary K. King, Attorney General
Santa Fe, NM

for Appellee

Cipriano Botello
Hobbs, NM

Pro Se Appellant

MEMORANDUM OPINION

FRY, Judge.

Defendant Cipriano Botello appeals the district court's denial of his motion for reconsideration of sentence. This Court filed a notice of proposed summary

disposition on September 21, 2011, proposing to dismiss the appeal because Defendant's notice of appeal was filed one day late. Defendant filed a memorandum in opposition on October 3, 2011, which we have given due consideration. Unpersuaded, we dismiss Defendant's appeal.

Rule 12-201(A)(2) NMRA requires that a notice of appeal shall be filed "within thirty (30) days after the judgment or order appealed from is filed in the district court clerk's office." The New Mexico Supreme Court has held that timely filing a notice of appeal is a mandatory precondition to this Court's exercise of jurisdiction. *Trujillo v. Serrano*, 117 N.M. 273, 277-78, 871 P.2d 369, 373-74 (1994).

Our review of the record shows that the order denying Defendant's motion to reconsider sentence was filed on May 10, 2011. [RP 361] Defendant, acting pro se, filed his notice of appeal thirty-one days later on Friday, June 10, 2011. [RP 363] Accordingly, the mandatory precondition has not been met, nor has Defendant pointed out any unusual circumstances, such as late filing caused by an error of the court, that might provide a sufficient reason to overlook the lateness. *Id.*

For the reasons stated above, we dismiss this appeal.

IT IS SO ORDERED.

CYNTHIA A. FRY, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

TIMOTHY L. GARCIA, Judge