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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v. **NO. 31,402**

DANA BORUNDA,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Stan Whitaker, District Judge

Gary K. King, Attorney General
Santa Fe, NM
M. Victoria Wilson, Assistant Attorney General
Albuquerque, NM
for Appellee

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

for Appellant

MEMORANDUM OPINION

WECHSLER, Judge.

Defendant appeals her sentence upon a guilty plea, where the district court

determined that the crimes were serious violent offenses for purposes of the Earned Meritorious Deduction Act (EMDA). In our notice, we proposed to reverse as it appeared that the district court had not articulated its reasoning for determining that Defendant was a serious violent offender. The State responded that the district court had articulated its reasons. [MIO 2] This Court ordered a transcript of the sentencing presentment hearing in order to confirm this assertion. Our review of the transcript makes clear that the district court did not articulate its reasons for determining that the offenses here were serious violent offenses. The district court states only that its intention was to classify the crimes as serious violent offenses. [TR 6] It did not, however, explain the reasons for making such a determination.

Our case law is clear that the district court must make factual findings that support its determination and that those factual findings must be supported by substantial evidence. *State v. Scurry*, 2007-NMCA-064, ¶ 4, 141 N.M. 591, 159 P.3d 1034. The district court failed to do so here.

Therefore, for the reasons stated herein and in the calendar notice, we reverse and remand to the district court for resentencing; either to enter factual findings that will support its conclusion that the crimes were serious violent offenses or to remove that designation.

IT IS SO ORDERED.

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JAMES J. WECHSLER, Judge

WE CONCUR:

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MICHAEL D. BUSTAMANTE, Judge

_____
LINDA M. VANZI, Judge