



Kincaid v. Lucero-Ortega

2023 | Cited 0 times | New Mexico Supreme Court | July 13, 2023

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1 IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

2 Filing Date: July 13, 2023

3 No. S-1-SC-39399

4 TERESA KINCAID,

5 Petitioner-Appellee,

6 v.

7 ROBERTA LUCERO-ORTEGA, Warden,

8 Respondent-Appellant.

9 APPEAL FROM THE DISTRICT COURT OF CIBOLA COUNTY 10 Amanda Sanchez Villalobos,
District Judge

11 Hector H. Balderas, Attorney General 12 Emily Bowen, Assistant Attorney General 13 Santa Fe,
NM

14 for Appellant

15 Bennett J. Baur, Chief Public Defender 16 Caitlin C.M. Smith, Associate Appellate Defender 17
Santa Fe, NM

18 for Appellee

19 DISPOSITIONAL ORDER OF AFFIRMANCE



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20 PER CURIAM.

21 {1} WHEREAS, this matter came on for consideration by the Court upon

1 Appellant's appeal of the district court's April 12, 2022, order denying Appellant's

2 second motion to reconsider the amended order granting Appellee's amended

3 petition for writ of habeas corpus;

4 {2} WHEREAS, this Court's September 23, 2022, order requesting a response

5 acknowledged Appellee's motion for expedited review, and Appellant's September

6 28, 2022, response was "not opposed to an expedited review";

7 {3} WHEREAS, the district court filed its original order granting Appellee's

8 amended petition for writ of habeas corpus on February 19, 2021, upon which

9 Appellant filed a motion to reconsider on March 8, 2021;

10 {4} WHEREAS, the district court granted Appellant's motion to reconsider in part

11 and issued an amended order granting Appellee's amended petition on August 20,

12 2021;

13 {5} WHEREAS, the district court failed to serve the parties with the amended

14 order entered on August 20, 2021;

15 {6} WHEREAS, notwithstanding the district court's failure to serve the parties,

16 both parties acknowledged that Appellee's counsel became aware of the amended

17 order on September 17, 2021, and that counsel for Appellee provided the order to

18 Appellant's counsel on that same day;

19 {7} WHEREAS, Appellant filed its second motion to reconsider on December 14,



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1 2021, eighty-eight days after it became aware of the amended order and over one-

2 hundred days after the district court entered the amended order;

3 {8} WHEREAS, this Court agrees with the district court's ruling that the

4 applicable timeline is the thirty-day period in which to file an appeal under Rule 5-

5 802 NMRA, see Rule 5-803(I) NMRA and comm. comment., and that the district

6 court was not required to consider Appellant's untimely appeal under Trujillo v.

7 Serrano, 1994-NMSC-024 , ¶ 9, 117 N.M. 273 , 871 P.2d 369 , because the district

8 court's failure to serve the parties did not confuse the administration of justice or

9 perpetrate injustice, see id., and does not excuse Appellant's extreme untimeliness

10 given Appellant's awareness on September 17, 2022, that the August 20, 2022, order

11 had been filed;

12 {9} WHEREAS, the rules of the Court and this Court's precedent have decided

13 the issues of law presented in this case;

14 {10} WHEREAS, this Court may exercise discretion under Rule 12-405(B) NMRA

15 to dispose of a case by nonprecedential order rather than by formal opinion;

16 {11} WHEREAS, this Court having considered the foregoing and being

17 sufficiently advised, Chief Justice C. Shannon Bacon, Justice Michael E. Vigil,

18 Justice David K. Thomson, Justice Julie J. Vargas, and Justice Briana H. Zamora,

19 concurring;

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1 {12} NOW, THEREFORE, IT IS ORDERED that the district court's dismissal of

2 this matter is AFFIRMED.

3 {13} IT IS SO ORDERED.

4 5 C. SHANNON BACON, Chief Justice

6 7 MICHAEL E. VIGIL, Justice

8 9 DAVID K. THOMSON, Justice

10 11 JULIE J. VARGAS, Justice

12 13 BRIANA H. ZAMORA, Justice

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