

STATE V. GARCIA-LARONDO

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
RAMIRO GARCIA-LARONDO,
Defendant-Appellant.**

No. A-1-CA-36482

COURT OF APPEALS OF NEW MEXICO

October 2, 2017

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Angela J. Jewell,
District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, for Appellee

Bennett J. Baur, Chief Public Defender, Kathleen T. Baldrige, Assistant Appellate
Defender, Rose M. Osborne, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

JONATHAN B. SUTIN, Judge. WE CONCUR: MICHAEL E. VIGIL, Judge, TIMOTHY L.
GARCIA, Judge

AUTHOR: JONATHAN B. SUTIN

MEMORANDUM OPINION

SUTIN, Judge.

{1} Defendant is appealing from an order revoking his probation. We issued a calendar notice proposing to affirm. Defendant has responded with a memorandum in opposition. We affirm.

{2} Initially, we note that there are two separate records because the two cases were initially filed separately but were consolidated for plea and sentencing purposes. All references will be to the record in D-202-CR-2014-04505.

{3} Defendant continues to challenge the sufficiency of the evidence to support the revocation of his probation. [MIO 4] “In a probation revocation proceeding, the [prosecution] bears the burden of establishing a probation violation with a reasonable certainty.” *State v. Leon*, 2013-NMCA-011, ¶ 36, 292 P.3d 493. “To establish a violation of a probation agreement, the obligation is on the [prosecution] to prove willful conduct on the part of the probationer so as to satisfy the applicable burden of proof.” *In re Bruno R.*, 2003-NMCA-057, ¶ 11, 133 N.M. 566, 66 P.3d 339; *see also State v. Martinez*, 1989-NMCA-036, ¶ 8, 108 N.M. 604, 775 P.2d 1321 (explaining that probation should not be revoked where the violation is not willful, in that it resulted from factors beyond a probationer’s control).

{4} Here, after an evidentiary hearing, the district court determined that Defendant had concealed his identity, had failed to report, had failed to notify of his change of address, had failed to comply with the requirements of the Community Corrections Unit, had failed to permit visits to his residence, had failed to comply with drug testing and hotline requirements, and had failed to provide urine for testing. [MIO 3; RP 183] These actions by Defendant violated multiple terms of his probation order. [RP 158-59]

{5} In his memorandum in opposition, Defendant states that there is nothing in the record that explains why he violated the terms of his probation. [MIO 5] However, Defendant bore the burden of presenting evidence to excuse noncompliance, by demonstrating that the violation resulted from factors beyond his control. *See State v. Parsons*, 1986-NMCA-027, ¶ 25, 104 N.M. 123, 717 P.2d 99 (“Once the [prosecution] proof of a breach of a material condition of probation, the defendant must come forward with evidence [to show that his non-compliance] was not willful.”). Defendant’s memorandum otherwise does not assert any error in facts or law in our calendar notice. *See State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that the party “responding to a summary calendar notice must come forward and specifically point out errors of law and fact” and the repetition of earlier arguments does not fulfill this requirement), *superseded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374.

{6} For the reasons set forth in this opinion, we affirm.

{7} **IT IS SO ORDERED.**

JONATHAN B. SUTIN, Judge

WE CONCUR:

MICHAEL E. VIGIL, Judge

TIMOTHY L. GARCIA, Judge