

STATE V. MARQUEZ

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STATE OF NEW MEXICO
Plaintiff-Appellee,
v.
PERLA MARQUEZ,
Defendant-Appellant.

No. A-1-CA-36981

COURT OF APPEALS OF NEW MEXICO

May 31, 2018

APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY, George P.
Eichwald, 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, Santa Fe, NM, for Appellant

JUDGES

J. MILES HANISEE, Judge. WE CONCUR: MICHAEL E. VIGIL, Judge, M. MONICA ZAMORA, Judge

AUTHOR: J. MILES HANISEE

MEMORANDUM OPINION

HANISEE, Judge.

{1} Defendant appeals from a district court order revoking her probation. We issued a calendar notice proposing to affirm. Defendant has responded with a memorandum in opposition. Not persuaded, we affirm.

{2} Defendant continues to challenge the sufficiency of the evidence to support the revocation of her probation. [MIO 2] “In a probation revocation proceeding, the [s]tate bears the burden of establishing a probation violation with a reasonable certainty.” See *State v. Leon*, 2013-NMCA-011, ¶ 36, 292 P.3d 493. “To establish a violation of a probation agreement, the obligation is on the [s]tate 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).

{3} Here, the State alleged that Defendant violated Standard Condition No. 2, which required her to report to her probation officer. [RP 145] At the hearing, her probation officer testified that Defendant failed to report as ordered, failed to make any contact after sentencing, and that her whereabouts had been unknown. [MIO 2; DS 2] Defendant testified and admitted that she did not report as required. [MIO 2; DS 2] The court, sitting as fact-finder, was free to reject Defendant’s explanations for her failure to report. See *State v. Cabezuela*, 2011-NMSC-041, ¶ 45, 150 N.M. 654, 265 P.3d 705. Under these circumstances, we conclude that the evidence was sufficient to support the revocation of Defendant’s probation.

{4} For the reasons set forth above, we affirm.

{5} IT IS SO ORDERED.

J. MILES HANISEE, Judge

WE CONCUR:

MICHAEL E. VIGIL, Judge

M. MONICA ZAMORA, Judge