

STATE V. RAY

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
MARCUS RAY,
Defendant-Appellant.

NO. 29,882

COURT OF APPEALS OF NEW MEXICO

April 16, 2010

APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY, Robert S. Orlik, District
Judge

COUNSEL

Hugh Dangler, Chief Public Defender, Allison H. Jaramillo, Assistant Appellate
Defender, Santa Fe, NM, for Appellee

Gary K. King, Attorney General, Santa Fe, NM, for Appellant

JUDGES

MICHAEL D. BUSTAMANTE, Judge. WE CONCUR: LINDA M. VANZI, Judge,
TIMOTHY L. GARCIA, Judge

AUTHOR: MICHAEL D. BUSTAMANTE

MEMORANDUM OPINION

BUSTAMANTE, Judge.

Defendant appeals the revocation of his probation. [MIO 1] We proposed to affirm in a notice of proposed summary disposition, and pursuant to an extension, Defendant has filed a timely memorandum in opposition. After considering Defendant's arguments and

remaining unpersuaded, we affirm the order revoking Defendant's probation and remanding him to the Department of Corrections to serve the remainder of his term.

In a probation revocation proceeding, the State bears the burden of establishing a violation with reasonable certainty. [MIO 6] *State v. Sanchez*, 2001-NMCA-060, ¶ 13, 130 N.M. 602, 28 P.3d 1143. To satisfy its burden, the State must introduce proof which would incline "a reasonable and impartial mind" to believe that the defendant violated the terms of probation. *Id.* "The proof of a violation of a condition of probation need not be established beyond a reasonable doubt." *State v. Martinez*, 108 N.M. 604, 606, 775 P.2d 1321, 1323 (Ct. App. 1989). On appeal, we review the district court's decision to revoke probation for an abuse of discretion. [MIO 6] *Id.*

As discussed in our previous notice, among other conditions, Defendant's probation order required him to register as a sex offender, to notify his probation officer if he moved, and to wear an ankle bracelet. [RP 71-72, 74-76; see generally MIO 2-4] Testimony was introduced at the probation revocation hearing that Defendant: (1) failed to register as a sex offender because he failed to submit an address change; (2) moved without notifying his probation officer; and (3) cut off his electronic monitor. [MIO 5; DS 2; RP 111-112] Defendant admitted that he cut off the ankle monitor and missed his appointment to register as a sex offender. [MIO 5]

Based upon the testimony introduced at the revocation hearing, there was sufficient evidence for a reasonable mind to believe that Defendant had violated the terms and conditions of his probation. Therefore, we affirm the district court's order revoking Defendant's probation and remanding him to the custody of the Department of Corrections to serve the remainder of his term.

IT IS SO ORDERED.

MICHAEL D. BUSTAMANTE, Judge

WE CONCUR:

LINDA M. VANZI, Judge

TIMOTHY L. GARCIA, Judge