

STATE V. ROBINSON

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
DALE ROBINSON,
Defendant-Appellant.**

No. A-1-CA-36419

COURT OF APPEALS OF NEW MEXICO

December 20, 2017

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Michael E.
Martinez, District Judge

COUNSEL

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

L. Helen Bennett, Albuquerque, NM, for Appellant

JUDGES

JONATHAN B. SUTIN, Judge. WE CONCUR: TIMOTHY L. GARCIA, Judge, J. MILES
HANISEE, Judge

AUTHOR: JONATHAN B. SUTIN

MEMORANDUM OPINION

SUTIN, Judge.

{1} Defendant Dale Eugene Robinson appeals the revocation of his probation ordered by the district court. Unpersuaded by Defendant's docketing statement, we issued a notice of proposed summary disposition, proposing to affirm. Defendant has

filed a memorandum in opposition. After due consideration, we remain unpersuaded and therefore affirm.

{2} We will attempt to avoid unnecessary repetition of our notice of proposed summary disposition and instead focus on the content of Defendant’s memorandum in opposition. Defendant requests that we revisit two of the arguments he raised in his docketing statement. Defendant continues to argue that his prohibited contact with the victim of his assault with a deadly weapon was not willful—as required to find that he violated his probation—because he mistakenly thought such contact was not prohibited, given that the victim apparently dismissed a restraining order against him and contacted him on her own volition. [MIO 1-2] See *In re Bruno R.*, 2003-NMCA-057, ¶ 11, 133 N.M. 566, 66 P.3d 339 (“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.”); 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 the violation resulted from factors beyond a probationer’s control and through no fault of the probationer). We reiterate that the probation violation was based on Defendant’s plea agreement, not a restraining order, and there is no indication that Defendant’s multiple instances of contact with the victim resulted from factors beyond his control. We remain persuaded that the prohibited contact was willful, even if Defendant was under the mistaken impression that contact was permissible.

{3} Defendant also revisits his argument that he was improperly prevented from cross-examining the victim about her “pattern and practice of petitioning for restraining orders as an abuse of the processes of the court system and a way of controlling the people in her life,” which impaired his “ability to directly and effectively confront and refute the State’s case[.]” [MIO 3] We addressed this argument in our notice of proposed disposition, and the additional authorities provided by Defendant [MIO 4] do not persuade us to abandon our conclusion. Among the un-refuted reasons we proposed to reject this argument is that, even if the testimony was erroneously excluded, no prejudice has been demonstrated by Defendant because sufficient evidence of prohibited contact was presented without the testimony of the victim.

{4} Accordingly, for the reasons stated in our notice of proposed summary disposition and in this opinion, we affirm.

{5} IT IS SO ORDERED.

JONATHAN B. SUTIN, Judge

WE CONCUR:

TIMOTHY L. GARCIA, Judge

J. MILES HANISEE, Judge