

STATE V. SOTELO

This memorandum opinion was not selected for publication in the New Mexico Appellate Reports. Please see Rule 12-405 NMRA for restrictions on the citation of unpublished memorandum opinions. Please also note that this electronic memorandum opinion may contain computer-generated errors or other deviations from the official paper version filed by the Court of Appeals and does not include the filing date.

**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
REBECCA SOTELO,
Defendant-Appellant.**

No. A-1-CA-35984

COURT OF APPEALS OF NEW MEXICO

January 25, 2018

APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY, Fred T. Van Soelen,
District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, M. Victoria Wilson, Albuquerque, NM, for Appellee

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

JUDGES

M. MONICA ZAMORA, Judge. WE CONCUR: STEPHEN G. FRENCH, Judge, EMIL J. KIEHNE, Judge

AUTHOR: M. MONICA ZAMORA

MEMORANDUM OPINION

ZAMORA, Judge.

{1} Defendant Rebecca Sotelo appeals from the revocation of her probation. This Court issued a notice of proposed disposition, in which we proposed to reverse

Defendant's probation revocation on the basis that the State had failed to demonstrate that Defendant willfully violated her probation, as it was unclear whether Defendant knew that she was required to report. The State responded to this Court's notice proposing to reverse by asserting that the evidence establishing non-compliance with a condition of probation is sufficient to justify a finding that the failure was willful unless Defendant comes forward with evidence to excuse the non-compliance. See *State v. Parsons*, 1986-NMCA-027, ¶ 25, 104 N.M. 123, 717 P.2d 99. The State asserted that, because Defendant had not come forward with any evidence at the probation revocation hearing to establish that she was unaware of the requirement to report, it had satisfied its burden.

{2} This Court issued a third calendar notice applying *Parsons* and proposing to agree with the State. We proposed to rely on the analysis contained in this Court's first notice of proposed disposition wherein we suggested that testimony by the Defendant's probation officer that Defendant was supposed to report to him on March 3, 2016, but did not report until August 2016 was sufficient to establish a violation. Thus, we proposed to conclude in our third calendar notice that Defendant then had the burden of establishing below that the violation was not willful and, as Defendant had failed to come forward with any evidence that she was unaware of the requirement to report, affirmance appeared appropriate.

{3} In response, Defendant has filed a memorandum in opposition asserting that she is relying on the arguments made in her previous memorandum in opposition filed on April 5, 2017. We note, however, that Defendant's April 5, 2017, memorandum in opposition does not address the burden shifting established by *Parsons* and on which this Court's third notice of proposed disposition is based. A 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. See *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003. Accordingly, we affirm.

{4} IT IS SO ORDERED.

M. MONICA ZAMORA, Judge

WE CONCUR:

STEPHEN G. FRENCH, Judge

EMIL J. KIEHNE, Judge