

STATE V. BUSTAMANTE

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
CRYSTAL BUSTAMANTE,
Defendant-Appellant.**

No. A-1-CA-37670

COURT OF APPEALS OF NEW MEXICO

January 22, 2019

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY, Lee A. Kirksey, District
Judge

COUNSEL

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

Bennett J. Baur, Chief Public Defender, William A. O'Connell, Assistant Appellate
Defender, Santa Fe, NM, for Appellant

JUDGES

LINDA M. VANZI, Chief Judge. WE CONCUR: JULIE J. VARGAS, Judge, JENNIFER L.
ATTREP, Judge

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Chief 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. “In a probation revocation proceeding, the [s]tate 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 [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; *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 numerous conditions of probation. [RP 230-31] The State’s petition summarized facts in support of these violations. [RP 234] Defendant conceded that she did not appear at several appointments with her probation officer. [MIO 1] However, she claimed that her domestic partner initially prevented her from going to some of the appointments, and that she thereafter did not go because she claimed that the probation officer treated her unfairly. [MIO 2-3] The district court, sitting as fact-finder, was free to reject Defendant’s veracity or that these violations were not wilful. *See State v. Sutphin*, 1988-NMSC-031, ¶ 21, 107 N.M. 126, 753 P.2d 1314 (noting that the fact-finder is free to reject a defendant’s version of events).

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

{5} IT IS SO ORDERED.

LINDA M. VANZI, Chief Judge

WE CONCUR:

JULIE J. VARGAS, Judge

JENNIFER L. ATTREP, Judge