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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-38112

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

RUSSELL PERRIN,

Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY
Steven Blankinship, District Judge**

Hector H. Balderas, Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
John C. Bennett, Assistant Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

VANZI, Judge.

{1} Defendant appeals from an order revoking his probation. We issued a calendar notice proposing to affirm. Defendant has responded with a memorandum in opposition. We affirm.

{2} Defendant continues to challenge the sufficiency of the evidence to support the revocation of his probation. [MIO 5] “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; see *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: failed to follow the law, did not report, did not get permission to move, possessed a controlled substance, did not pay probation costs, and absconded from justice. [RP 184-86] The district court found that each of these violations occurred. [RP 225] The evidence indicated that Defendant was in possession of a recently-stolen motorcycle, did not report or pay fines, tested positive for methamphetamine and opiates, and was generally unavailable for three months. [MIO 3-5] Defendant relies on an unsubstantiated claim that he was in the hospital for part of this time. [MIO 4] The district court, sitting as fact-finder, was free to reject Defendant’s claim and the implication that some of the violations were not willful. 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). The court was also free to reject Defendant’s claim [MIO 5] that he had not used controlled substances; instead, the court could rely on the positive test results.

{4} For the reasons set forth above, and in our calendar notice, we affirm the district court.

{5} IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:

MEGAN P. DUFFY, Judge

BRIANA H. ZAMORA, Judge