

STATE V. PORRAS

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**STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
ADAM PORRAS,
Defendant-Appellant.**

No. 36,161

COURT OF APPEALS OF NEW MEXICO

July 25, 2017

APPEAL FROM THE DISTRICT COURT OF LUNA COUNTY, J.C. Robinson, District
Judge

COUNSEL

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

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

JUDGES

J. MILES HANISEE, Judge. WE CONCUR: STEPHEN G. FRENCH, Judge, HENRY M.
BOHNHOFF, Judge

AUTHOR: J. MILES HANISEE

MEMORANDUM OPINION

HANISEE, Judge.

{1} Defendant Adam Porrás appeals from the district court's order revoking his probation. This Court issued a notice of proposed disposition in which we proposed to

affirm. Defendant has filed a memorandum in opposition, which we have duly considered. Unpersuaded, we affirm.

{2} In his memorandum in opposition, Defendant continues to argue that the district erred in failing to hold his adjudicatory hearing on the petition to revoke his probation within the time limit imposed by Rule 5-805(H) NMRA (Issue 1), and he was denied due process based on the delay of almost eleven months between his arrest and the matter being brought before the district court for final disposition (Issue 2). [MIO 1-2; see also DS unpaginated 4]

{3} **Issue 1:** As discussed in our notice of proposed disposition, even if we were to agree with Defendant that his adjudicatory hearing was held seventy days after his initial hearing in violation of Rule 5-805(H), this violation did not require the district court to dismiss the petition to revoke his probation. [See CN 2-4] See *id.* (“The adjudicatory hearing shall commence no later than sixty (60) days after the initial hearing is conducted.”). *But see* Rule 5-805(L) (“[T]he court *may* dismiss the motion to revoke probation for violating any of the time limits in this rule.” (emphasis added)).

{4} **Issue 2:** As discussed in our notice of proposed disposition, “in order to establish a violation of due process, a defendant must show prejudice.” *State v. Neal*, 2007-NMCA-086, ¶ 42, 142 N.M. 487, 167 P.3d 935. [See CN 4] We note that Defendant “contends that he was prejudiced by the delay in this case because he was held in detention, mostly in the county jail, for the entire duration of the delay” [MIO 2]; however, this assertion, without more, is not sufficient to establish prejudice. See *In re Ernesto M.*, 1996-NMCA-039, ¶ 10, 121 N.M. 562, 915 P.2d 318 (“An assertion of prejudice is not a showing of prejudice.”).

{5} Accordingly, we affirm the revocation of Defendant’s probation.

{6} **IT IS SO ORDERED.**

J. MILES HANISEE, Judge

WE CONCUR:

STEPHEN G. FRENCH, Judge

HENRY M. BOHNHOFF, Judge