

STATE V. SWANN

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
SHAYNE SWANN,
Defendant-Appellant.

No. 34,408

COURT OF APPEALS OF NEW MEXICO

June 2, 2015

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Angela Jewell,
District Judge

COUNSEL

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

Jorge A. Alvarado, Chief Public Defender, Kathleen T. Baldridge, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

TIMOTHY L. GARCIA, Judge. WE CONCUR: RODERICK T. KENNEDY, Judge, LINDA M. VANZI, Judge

AUTHOR: TIMOTHY L. GARCIA

MEMORANDUM OPINION

GARCIA, Judge.

{1} Defendant Shayne Swann appeals from the revocation of his probation, challenging the sufficiency of the evidence to establish that he violated the conditions of his probation. Unpersuaded by Defendant's docketing statement, we entered a notice of

proposed summary disposition, proposing to affirm. Defendant has filed a memorandum in opposition to our notice. We remain unpersuaded and therefore affirm.

{2} On appeal, Defendant contends that the district court abused its discretion by finding that he violated his probation. [DS 5; MIO 3-5] Our notice detailed the relevant facts for this issue and set forth the law that we believed controlled. Applying the law to the facts, we proposed to conclude that there was ample evidence to support the revocation of Defendant's probation. In response, Defendant does not assert that our account of the evidence upon which we proposed to rely was incorrect; further, his response does not assert any new factual or legal argument that persuades this Court that our notice was incorrect regarding the sufficiency of the evidence. See *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that 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point out errors of law and fact, and the repetition of earlier arguments does not fulfill this requirement), *superceded by statute on other grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. Defendant's memorandum in opposition focuses on his own testimony, which contradicted the testimony of the State's two witnesses, and on this basis, Defendant asserts that there was no "sufficient reliable evidence to support [the district court's] findings." [MIO 5] This argument is unpersuasive. On appeal, "[w]e defer to the district court when it weighs the credibility of witnesses and resolves conflicts in witness testimony." *State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482. The district court could have properly relied on evidence that contradicted Defendant's version of the facts, *State v. Rojo*, 1999-NMSC-001, ¶ 19, 126 N.M. 438, 971 P.2d 829, and it appears to have done just that in this case. In short, we perceive no error in the proceedings below, and on the basis of our proposed disposition, we hold that sufficient evidence supports the revocation of Defendant's probation.

{3} For the reasons set forth in our notice and this opinion, we affirm.

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

TIMOTHY L. GARCIA, Judge

WE CONCUR:

RODERICK T. KENNEDY, Judge

LINDA M. VANZI, Judge