

**STATE V. TRUJILLO**

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**STATE OF NEW MEXICO,**  
Plaintiff-Appellee,  
v.  
**ADRIAN TRUJILLO,**  
Defendant-Appellant.

No. 36,043

COURT OF APPEALS OF NEW MEXICO

April 11, 2017

APPEAL FROM THE DISTRICT COURT OF SANDOVAL COUNTY, Louis P.  
McDonald, District Judge

**COUNSEL**

Hector H. Balderas, Attorney General, Santa Fe, 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: JAMES J. WECHSLER, Judge, J. MILES HANISEE, Judge

**AUTHOR:** M. MONICA ZAMORA

**MEMORANDUM OPINION**

**ZAMORA, Judge.**

{1} Defendant appeals from the district court's order revoking his probation, committing him to the Department of Corrections, and unsatisfactorily discharging him from 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} Defendant’s singular challenge on appeal is whether the State sufficiently proved that he violated the conditions of his probation. [DS 2] In our calendar notice, we recognized that in a probation revocation proceeding, the State bears the burden of establishing a violation with reasonable certainty. [CN 2] See *State v. Sanchez*, 2001-NMCA-060, ¶ 11, 130 N.M. 602, 28 P.3d 1143. To satisfy this burden, the State is required to introduce proof which would incline “a reasonable and impartial mind to the belief that a defendant has violated the terms of probation.” *State v. Martinez*, 1989-NMCA-036, ¶ 4, 108 N.M. 604, 775 P.2d 1321. On appeal, this Court reviews the decision to revoke probation for an abuse of discretion. See *id.* ¶ 5. “To establish an abuse of discretion, it must appear the [district] court acted unfairly or arbitrarily, or committed manifest error.” *Id.*

{3} Based on the facts as laid out in Defendant’s docketing statement, we proposed to conclude in our calendar notice that the district court did not abuse its discretion in finding that Defendant violated a standard condition of his probation—by failing to get permission from his probation officer before changing his residence—and we proposed to affirm the district court’s revocation of Defendant’s probation on that basis. [CN 2-3]

{4} In response to this Court’s notice of proposed disposition, Defendant argues that the evidence was insufficient to establish that his violation was willful. [MIO 3-5] See *In re Bruno R.*, 2003-NMCA-057, ¶ 13, 133 N.M. 566, 66 P.3d 339 (stating that “if violation of probation is not willful, but resulted from factors beyond a probationer’s control, probation may not be revoked”). We acknowledge that willful conduct is a requisite. However, as we have previously stated, “[o]nce the state offers proof of a breach of a material condition of probation, the defendant must come forward with evidence [to show that his] non-compliance . . . was not willful.” *State v. Parsons*, 1986-NMCA-027, ¶ 25, 104 N.M. 123, 717 P.2d 99. “[I]f defendant fails to carry his burden, then the [district] court is within its discretion in revoking [Defendant’s probation].” *Martinez*, 1989-NMCA-036, ¶ 8.

{5} In the present case, there is no indication that Defendant came forward with evidence to show that his non-compliance—failure to get permission from his probation officer before changing his residence—was somehow not willful, aside from the bare assertion in his memorandum in opposition that he “maintains that his failure . . . was not willful and should not form the basis of a probation revocation.” [MIO 4-5] Even in light of his assertion, we are not convinced that Defendant carried his burden, and we conclude that the district court was within its discretion in revoking his probation.

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

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

**M. MONICA ZAMORA, Judge**

**WE CONCUR:**

**JAMES J. WECHSLER, Judge**

**J. MILES HANISEE, Judge**