

**STATE V. WILSON**

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**STATE OF NEW MEXICO,**  
Plaintiff-Appellee,  
v.  
**JAMES WILSON,**  
Defendant-Appellant.

No. 32,984 (Consolidated with 33,091, 33,092, & 33,093)

COURT OF APPEALS OF NEW MEXICO

December 3, 2013

APPEAL FROM THE DISTRICT COURT OF LEA COUNTY, Gary L. Clingman, District  
Judge

**COUNSEL**

Gary K. King, Attorney General, Santa Fe, NM, for Appellee

Jorge A. Alvarado, Chief Public Defender, Will O'Connell, Assistant Appellate Defender,  
Santa Fe, NM, for Appellant

**JUDGES**

MICHAEL E. VIGIL, Judge. WE CONCUR: JAMES J. WECHSLER, Judge, CYNTHIA A.  
FRY, Judge

**AUTHOR:** MICHAEL E. VIGIL

**MEMORANDUM OPINION**

**VIGIL, Judge.**

{1} Defendant, James Wilson, appeals from the district court's order revoking probation and imposing judgment and sentence. [DS 1] He contends the district court erred by revoking his probation in four different cases because he was not serving a

term of probation in these cases at the time he admittedly violated probation in another case. [DS 3] We issued a notice consolidating the four cases and proposing to summarily affirm. Defendant filed a memorandum in opposition to our proposed summary affirmance. We remain unpersuaded by Defendant's arguments and affirm.

**{2}** In his memorandum in opposition, Defendant argues that he preserved the argument he makes on appeal by raising it orally in the district court. [MIO 2, footnote 1] We thus consider the merits of Defendant's argument.

**{3}** In our notice, we proposed to summarily affirm based on *State v. Lopez*, 2007-NMSC-011, 141 N.M. 293, 154 P.3d 668. We invited Defendant to specifically explain why *Lopez* is inapplicable. Defendant does not attempt to distinguish *Lopez*, but continues to argue that the district court erred, relying on *State v. Franklin*, 1967-NMSC-151, 78 N.M. 127, 428 P.2d 982, and *State v. Boyer*, 1985-NMCA-029, 103 N.M. 655, 712 P.2d 1. [DS 2] We continue to believe that *Lopez* controls and thus affirm.

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

**MICHAEL E. VIGIL, Judge**

**WE CONCUR:**

**JAMES J. WECHSLER, Judge**

**CYNTHIA A. FRY, Judge**