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IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

No. A-1-CA-38697

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

CLINTON M. FERRIER,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY
Daylene A. Marsh, District Court Judge

Hector H. Balderas, Attorney General
Santa Fe, NM

for Appellee

Bennett J. Baur, Chief Public Defender
MJ Edge, Assistant Appellate Defender
Santa Fe, NM

for Appellant

MEMORANDUM OPINION

ATTREP, Judge.

{1} This matter was submitted to this Court on the brief in chief pursuant to the Administrative Order for Appeals in Criminal Cases Involving the Law Offices of the Public Defender, From the Eleventh Judicial District Court in *In re Pilot Project for Criminal Appeals*, No. 2019-002, effective October 1, 2019. Having considered the brief in chief, and concluding the briefing submitted to this Court provides no possibility for reversal, and determining that this case is appropriate for resolution on Track 1 as defined in that order, we affirm for the following reasons.

{2} Defendant's appeal is from the district court's October 10, 2019 order (2019 Order) revoking his probation in three cases that were consolidated below for purposes of sentencing. [BIC 1] In the 2010 judgment and sentence, Defendant was ordered to serve two years of a suspended sentence, followed by a five-year term of probation. [BIC 1-2; RP 75-76] Over the years, Defendant was subject to multiple probation revocations, one of which resulted in the district court's July 20, 2018 order (2018 Order), imposing one year in jail and a new five-year probation term. [BIC 1-2; RP 245-246] While Defendant appeals from the sentence imposed upon the revocation of his probation in the 2019 Order, his contention is actually premised on the district court's alleged improper imposition of a new five-year probation term in the prior 2018 Order. Specifically, Defendant contends the terms of probation imposed by the district court violate NMSA 1978, Section 31-20-5 (2001), which provides the total term of probation "shall not exceed five years." [Id. at 3] Defendant argues that the district court imposed terms of probation that, in the aggregate, exceeded five years. [BIC 3]

{3} Insofar as Defendant's notice of appeal is from the 2019 Order, that order does not sentence Defendant to probation. [RP 348-49] As such, Defendant raises no viable Section 31-20-5(A) issue with respect to the 2019 Order. To the extent Defendant intends to instead challenge in this appeal the district court's 2018 Order sentencing him to, *inter alia*, a five-year period of probation [BIC 3, RP 245-46], we conclude Defendant failed to appeal this order and the time for doing so has passed. See Rule 12-201(A) NMRA (providing thirty days for filing the notice of appeal). We note further that, even if Defendant had timely appealed the 2018 Order, Defendant's Section 31-20-5(A) argument fails under our case law. Our courts have construed Section 31-20-5(A) to mean that "the maximum period of probation that a district court may impose at sentencing is a total of five years, regardless of the number of convictions, *not* that five years is the total amount of time a defendant can serve on probation, regardless of the number of violations." *State v. Baca*, 2005-NMCA-001, ¶ 18, 136 N.M. 667, 104 P.3d 533 (emphasis added). Thus, the imposition of a new five-year probation term in the 2018 Order, following Defendant's incarceration for violating his probation, is not contrary to the statute. See *id.*

{4} Lacking a viable and timely issue to address under Section 31-20-5(A), we affirm the district court.

{5} IT IS SO ORDERED.

JENNIFER L. ATTREP, Judge

WE CONCUR:

KRISTINA BOGARDUS, Judge

MEGAN P. DUFFY, Judge