

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico
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2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

5 **LAYNE CORY,**

6 Defendant-Appellant.



Mark Reynolds
No. A-1-CA-40728

7 **APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY**

8 **Angie K. Schneider, District Court Judge**

9 Raúl Torrez, Attorney General
10 Santa Fe, NM

11 for Appellee

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

15 for Appellant

16 **MEMORANDUM OPINION**

17 **DUFFY, Judge.**

18 {1} This matter was submitted to the Court on the brief in chief pursuant to the
19 Administrative Order for Appeals in Criminal Cases from the Second, Eleventh, and
20 Twelfth Judicial District Courts in *In re Pilot Project for Criminal Appeals*, No.
21 2022-002, effective November 1, 2022. Having considered the brief in chief,
22 concluding the briefing submitted to the Court provides no possibility for reversal,

1 and determining that this case is appropriate for resolution on Track 1 as defined in
2 that order, we affirm for the following reasons.

3 {2} Defendant appeals from the revocation of his probation. He challenges the
4 sufficiency of the evidence to support the disposition [BIC 9-12] and contends that
5 the district court erred in admitting certain evidence pertaining to his discharge from
6 a treatment program. [BIC 4-9]

7 {3} Proof of a probation violation must be established with a reasonable certainty,
8 such that a reasonable and impartial mind would believe that the defendant violated
9 the terms of probation. *State v. Sanchez*, 2001-NMCA-060, ¶ 13, 130 N.M. 602, 28
10 P.3d 1143. On appeal we must examine the evidence in the light most favorable to
11 the district court's ruling. *State v. Trevor M.*, 2015-NMCA-009, ¶ 14, 341 P.3d 25.
12 We cannot reweigh the evidence or substitute our judgment for that of the fact-
13 finder. *State v. Ware*, 1994-NMCA-132, ¶ 6, 118 N.M. 703, 884 P.2d 1182.

14 {4} At the hearing on the State's petition to revoke, Defendant's probation officer
15 testified that Defendant violated the terms and conditions of his probation in
16 numerous ways, including by failing to report as required, by removing his GPS
17 tracker without permission, and by failing to complete a treatment program, inter
18 alia. [BIC 2-3; RP 309-10] The State also called the police officer who took
19 Defendant into custody, who testified that methamphetamine was found on
20 Defendant's person when he was apprehended. [BIC 3; RP 311] Finally, Defendant

1 admitted that he removed his GPS tracking device. [BIC 3; RP 313] This evidence
2 amply supports the district court’s determination that Defendant violated the terms
3 and conditions of his probation. *See, e.g., State v. Lopez*, 2007-NMSC-011, ¶¶ 4, 17-
4 19, 141 N.M. 293, 154 P.3d 668 (upholding the authority of the district court to
5 revoke where the probationer committed a new offense); *State v. Leyba*, 2009-
6 NMCA-030, ¶¶ 16-18, 145 N.M. 712, 204 P.3d 37 (holding that the defendant’s
7 admission was sufficient to establish a probation violation); *State v. Jimenez*, 2003-
8 NMCA-026, ¶¶ 5, 10-11, 17, 133 N.M. 349, 62 P.3d 1231 (observing that a probation
9 officer’s testimony that the defendant had failed to report was sufficient to support
10 the revocation of his probation), *rev’d on other grounds*, 2004-NMSC-012, 135
11 N.M. 442, 90 P.3d 461; *State v. Sanchez*, 1990-NMCA-017, ¶¶ 3, 12-13, 109 N.M.
12 718, 790 P.2d 515 (upholding probation revocation based upon the defendant’s
13 violation of the standard condition prohibiting possession or use of controlled
14 substances). *See generally State v. Leon*, 2013-NMCA-011, ¶ 37, 292 P.3d 493
15 (holding that a probation officer’s testimony was sufficient to establish a violation
16 and to support revocation of probation).


17 {5} On appeal Defendant takes the position that his probation violations were
18 “simply the result of unfortunate circumstances.” [BIC 11] By this, we understand
19 Defendant to suggest that his violations were not willful. However, Defendant does
20 not direct us to anything in the record that supports his position, apart from his

1 marginally relevant testimony that he believed it would have been futile to request
2 permission to travel out-of-state. [BIC 3; RP 313] *See generally State v. Aslin*, 2018-
3 NMCA-043, ¶ 9, 421 P.3d 843 (explaining that “once the state establishes to a
4 reasonable certainty that the defendant violated probation, a reasonable inference
5 arises that the defendant did so willfully, and it is then the defendant’s burden to
6 show that failure to comply was either not willful or that he or she had a lawful
7 excuse”), *rev’d on other grounds*, 2020-NMSC-004, 457 P.3d 249. *Cf. State v.*
8 *Martinez*, 1989-NMCA-036, ¶¶ 9-10, 108 N.M. 604, 775 P.2d 1321 (rejecting an
9 argument that a violation should be excused, where the probationer made no effort
10 to comply based on his assumption that compliance would have been impossible).
11 Because Defendant did not present evidence at the hearing to rebut the reasonable
12 inferences arising from the testimony of the probation officer and the arresting
13 officer, we conclude that the district court did not abuse its discretion in determining
14 that the State met its burden of establishing that Defendant willfully violated his
15 probation. *See, e.g., Leon*, 2013-NMCA-011, ¶¶ 38-39 (concluding that “the
16 evidence was sufficient for a reasonable mind to conclude that [the d]efendant had
17 violated [a] condition of his probation” when the probation officer testified that the
18 defendant did so and the defendant did not come forward with any evidence to rebut
19 this presumption).

1 {6} Insofar as the evidence was sufficient to establish Defendant’s failure to
2 report, as well as his unauthorized removal of the GPS monitor and his possession
3 of a controlled substance, we conclude that Defendant’s challenge to the propriety
4 of the admission of a report concerning his failure to complete a treatment program
5 presents no basis for relief on appeal. *See generally id.* ¶ 37 (“[I]f there is sufficient
6 evidence to support just one violation, we will find the district court’s order was
7 proper.”). Accordingly, we decline to consider the argument further. *See generally*
8 *State v. Sanchez*, 2015-NMCA-084, ¶ 8, 355 P.3d 795 (observing that our policy of
9 judicial restraint generally requires that we decide cases on the narrowest possible
10 grounds).

11 {7} In light of the foregoing considerations, we uphold the revocation of
12 Defendant’s probation.

13 {8} **IT IS SO ORDERED.**

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15 _____
MEGAN P. DUFFY, Judge

16 **WE CONCUR:**

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18 _____
SHAMMARA H. HENDERSON, Judge

19 
20 _____
KATHERINE A. WRAY, Judge