


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

Court of Appeals of New Mexico  
Filed 6/15/2023 9:36 AM

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,



Mark Reynolds

4 v.

**No. A-1-CA-40723**

5 **BRIAN SIZEMORE a/k/a BRIAN**

6 **EUGENE SIZEMORE,**

7 Defendant-Appellant.

8 **APPEAL FROM THE DISTRICT COURT OF CURRY COUNTY**

9 **Benjamin Cross, District Court Judge**

10 Raúl Torrez, Attorney General

11 Santa Fe, NM

12 for Appellee

13 Bennett J. Baur, Chief Public Defender

14 Nina Lalevic, Assistant Appellate Defender

15 Santa Fe, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **DUFFY, Judge.**

19 {1} Defendant appeals the district court's order revoking his probation. In this  
20 Court's notice of proposed disposition, we proposed to summarily affirm. Defendant  
21 filed a memorandum in opposition, which we have duly considered. Remaining  
22 unpersuaded, we affirm.

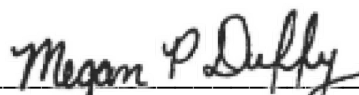
1 {2} In his memorandum in opposition, Defendant maintains that there is  
2 insufficient evidence to revoke his probation. [MIO 4] Defendant continues to argue  
3 that the evidence was insufficient to support his revocation because it was possible  
4 that he showed up to the probation office as ordered without signing the sign-in sheet  
5 and that he may have been seen by other officers. [MIO 5] However, as we explained  
6 in our notice of proposed disposition, the State offered testimony from Defendant's  
7 probation officer that Defendant did not show up as ordered. [CN 3] Defendant had  
8 an opportunity to cross-examine the probation officer on any perceived weaknesses  
9 or inconsistencies in the testimony, and we reiterate that this Court does not reweigh  
10 the evidence on appeal *See State v. Griffin*, 1993-NMSC-071, ¶ 17, 116 N.M. 689,  
11 866 P.2d 1156 (noting that this Court does not reweigh the evidence, and we may  
12 not substitute our judgment for that of the fact-finder, as long as there is sufficient  
13 evidence to support the verdict); *see also State v. Salas*, 1999-NMCA-099, ¶ 13, 127  
14 N.M. 686, 986 P.2d 482 (explaining that it is for the jury to resolve any conflicts and  
15 determine weight and credibility in the testimony). Consequently, we conclude that  
16 the revocation of Defendant's probation was supported by sufficient evidence.

17 {3} Defendant also maintains that it was error for the district court to allow  
18 Defendant's probation officer to testify to knowledge or statements of other  
19 compliance officers [MIO 6] and that Defendant's revocation was the result of  
20 cumulative error [MIO 8]. Defendant has failed, however, to assert any new facts,

1 law, or argument that persuade this Court that our notice of proposed disposition was  
2 erroneous. *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955  
3 P.2d 683 (“Our courts have repeatedly held that, in summary calendar cases, the  
4 burden is on the party opposing the proposed disposition to clearly point out errors  
5 in fact or law.”); *State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759  
6 P.2d 1003 (stating that “[a] party responding to a summary calendar notice must  
7 come forward and specifically point out errors of law and fact,” and the repetition of  
8 earlier arguments does not fulfill this requirement), *superseded by statute on other*  
9 *grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374. We  
10 therefore refer Defendant to our analysis therein.

11 {4} Accordingly, for the reasons stated in our notice of proposed disposition and  
12 herein, we affirm the revocation of Defendant’s probation.

13 {5} **IT IS SO ORDERED.**

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MEGAN P. DUFFY, Judge

16 **WE CONCUR:**

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JENNIFER L. ATTREP, Chief Judge

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JACQUELINE R. MEDINA, Judge