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

2 **STATE OF NEW MEXICO,**

Court of Appeals of New Mexico
Filed 3/18/2024 11:16 AM

3 Plaintiff-Appellee,



Cynthia A. Hernandez-Madrid
Acting Chief Clerk

4 v.

No. A-1-CA-41577

5 **LIEGHRAUGHNZO JAY BENALLY**

6 **a/k/a LIEGHRAUHGZNZO BENALLY**

7 **a/k/a LEE BENALLY,**

8 Defendant-Appellant.

9 **APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY**

10 **Karen L. Townsend, District Court Judge**

11 Raúl Torrez, Attorney General

12 Santa Fe, NM

13 for Appellee

14 Bennett J. Baur, Chief Public Defender

15 Kathleen T. Baldrige, Assistant Appellate Defender

16 Santa Fe, NM

17 for Appellant

18 **MEMORANDUM OPINION**

19 **DUFFY, Judge.**

20 {1} This matter was submitted to this Court on the brief in chief pursuant to the

21 Administrative Order for Appeals in Criminal Cases from the Second, Eleventh, and

22 Twelfth Judicial District Courts in *In re Pilot Project for Criminal Appeals*, No.

23 2022-002, effective November 1, 2022. Having considered the brief in chief,

1 concluding the briefing submitted to this Court provides no possibility for reversal,
2 and determining that this case is appropriate for resolution on Track 1 as defined in
3 that order, we affirm for the following reasons.

4 {2} Defendant Lieghraughnzo Jay Benally, appeals from the revocation of his
5 probation. We review the district court’s decision to revoke probation under an abuse
6 of discretion standard. *State v. Leon*, 2013-NMCA-011, ¶ 36, 292 P.3d 493. “In a
7 probation revocation proceeding, the [s]tate bears the burden of establishing a
8 probation violation with a reasonable certainty.” *Id.*; see *State v. Sanchez*, 2001-
9 NMCA-060, ¶ 13, 130 N.M. 602, 28 P.3d 1143 (stating that a probation violation
10 must be proved to a reasonable certainty, such that a reasonable and impartial mind
11 would believe that the defendant violated the terms of probation). Additionally, the
12 State bears the burden of proving that the violation was willful. See *In re Bruno R.*,
13 2003-NMCA-057, ¶ 11, 133 N.M. 566, 66 P.3d 339 (stating that “[t]o establish a
14 violation of a probation agreement, the obligation is on the [s]tate to prove willful
15 conduct on the part of the probationer so as to satisfy the applicable burden of
16 proof”).

17 {3} On appeal, Defendant challenges the sufficiency of the evidence to support
18 the disposition, arguing specifically that the violations were not willful. See *State v.*
19 *Martinez*, 1989-NMCA-036, ¶ 8, 108 N.M. 604, 775 P.2d 1321 (explaining that

1 probation should not be revoked where the violation is not willful, in that it resulted
2 from factors beyond a probationer's control).

3 {4} On this issue, the relevant factual and procedural background is as follows.
4 Defendant pled no contest to felony offenses pursuant to a plea agreement and was
5 given a suspended sentence and placed on probation. [RP 88, 105-107] On October
6 3, 2022, the State filed a motion to revoke probation alleging that Defendant violated
7 conditions of probation requiring that he report to his probation officer as often as
8 required and that he obtain his probation officer's permission before changing his
9 residence. [RP 117-120] On January 31, 2023, the State filed an amended motion to
10 revoke probation restating the prior alleged violations and alleging that Defendant
11 committed additional violations of probation by incurring new criminal charges and
12 by failing to report his January 22, 2023, arrest to his probation officer. [RP 129-
13 135]

14 {5} At the revocation hearing, Defendant's probation officer, PO Gayle, testified
15 that he instructed Defendant to report in person in September 15, 2022, but
16 Defendant did not report, and instead called PO Gayle to state that he was changing
17 addresses from his girlfriend's home to his father's home. PO Gayle went to
18 Defendant's father's home to conduct a field visit on September 19, 2022, but was
19 informed by Defendant's father that Defendant had stayed for two days and then
20 moved back to his girlfriend's home. [BIC 2-3; RP 141] PO Gayle went to the

1 girlfriend's home on September 23, 2022, but Defendant was not there. [BIC 2-3;
2 RP 141] Thereafter, Defendant did not report to probation in October, November, or
3 December. [BIC 2-3; RP 141]

4 {6} Defendant also testified at the hearing and acknowledged that he stopped
5 checking in with probation on September 15, 2022, even though he knew that he was
6 required to check in monthly. [BIC 9; RP 142] Defendant testified that he did this
7 because he believed that his girlfriend was falsely reporting to his probation officer
8 that he was violating the terms of his probation, and that there was a warrant out for
9 his arrest. Defendant therefore chose to stop checking in with probation because he
10 did not want to be arrested. [BIC 3; RP 143] Defendant also acknowledged that he
11 changed his residence without informing his probation officer. [3-7-2023 CD
12 11:51:22 - 11:52:10]

13 {7} The State's evidence, as well as Defendant's admissions, were sufficient to
14 support the district court's determination that Defendant violated his probation by
15 failing to report and by changing his address without permission. [RP 171] *See State*
16 *v. Jimenez*, 2003-NMCA-026, ¶¶ 5, 10-11, 17, 133 N.M. 349, 62 P.3d 1231
17 (observing that a probation officer's testimony that the defendant had failed to report
18 was sufficient to support the revocation of his probation), *rev'd on other grounds*,
19 2004-NMSC-012, 135 N.M. 442, 90 P.3d 461; *State v. Neal*, 2007-NMCA-086,
20 ¶¶ 42, 46, 142 N.M. 487, 167 P.3d 935 (affirming the revocation of probation based

1 in part on the defendant’s admission that he had moved without providing his new
2 address to his probation officer).

3 {8} Defendant contends that his failure to check in with probation and keep in
4 contact with his probation officer was due to his fear of being arrested and sent to
5 jail, which would prevent him from being involved in his daughter’s life. [BIC
6 Accordingly, Defendant argues that his conduct was not willful and cannot support
7 a revocation of his probation. *See Leon*, 2013-NMCA-011, ¶ 36 (stating that “[o]nce
8 the state offers proof of a breach of a material condition of probation, the defendant
9 must come forward with evidence to excuse non[]compliance” (internal quotation
10 marks and citation omitted)). [BIC 7-8] However, while a probationer may seek to
11 establish that his failure to comply was not willful, this usually requires a
12 demonstration that the violation “resulted from factors beyond his control and
13 through no fault of his own.” *Martinez*, 1989-NMCA-036, ¶ 8; *see also State v.*
14 *Williams*, 2021-NMCA-021, ¶ 6, 489 P.3d 949 (discussing that if the probation
15 violation “resulted from factors beyond a probationer’s control, probation may not
16 be revoked” (internal quotation marks and citation omitted)).

17 {9} Defendant’s testimony was that he was aware of his probation requirements
18 but consciously chose to disregard them for his own subjective reasons, not that his
19 conduct “resulted from factors beyond his control” or “through no fault of his own.”
20 *Martinez*, 1989-NMCA-036, ¶ 8; *see also State v. Aslin*, 2018-NMCA-043, ¶ 11,

1 421 P.3d 843 (holding that the district court did not abuse its discretion in
2 determining that the defendant willfully violated his probation, where the defendant
3 presented failed to prove that the violation “resulted from factors beyond his control”
4 internal quotation marks and citation omitted)), *rev’d on other grounds*, 2020-
5 NMSC-004, 457 P.3d 249. Additionally, the district court was not required to credit
6 Defendant’s testimony regarding his reasons for violating his probation. *See*
7 *generally State v. Ortiz*, 2017-NMCA-006, ¶ 18, 387 P.3d 323 (“It is within the
8 district court’s purview, when acting as fact-finder, to weigh the credibility of
9 witnesses and, in doing so, discard [the d]efendant’s version of events.”); *State v.*
10 *Trujillo*, 2002-NMSC-005, ¶ 31, 131 N.M. 709, 42 P.3d 814 (reasoning that a fact-
11 finder may “reject the defendant’s version of an incident” (internal quotation marks
12 and citation omitted)).

13 {10} We therefore conclude that the evidence was sufficient to establish a willful
14 violation of probation. *See Martinez*, 1989-NMCA-036, ¶ 8 (“[I]f [the] defendant
15 fails to carry his burden, then the [district] court is within its discretion in revoking
16 [the defendant’s probation].”).

17 {11} Accordingly, we affirm the district court.

18 {12} **IT IS SO ORDERED.**

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MEGAN P. DUFFY, Judge

1 **WE CONCUR:**

2 *jacqueline R. Medina*
3 **JACQUELINE R. MEDINA, Judge**

4 
5 **ZACHARY A. UVES, Judge**