

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

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 v.

5 **CURTIS JACKSON,**

6 Defendant-Appellant.

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

8 **Jennifer E. Delaney, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender

13 Santa Fe, NM

14 Steven J. Forsberg, Assistant Appellate Defender

15 Albuquerque, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **DUFFY, Judge.**

19 {1} Defendant appeals from a district court order revoking his probation. We  
20 issued a calendar notice proposing to affirm. Defendant has responded with a  
21 memorandum in opposition. We affirm.

22 {2} Defendant continues to challenge the sufficiency of the evidence to support  
23 the revocation. “In a probation revocation proceeding, the [s]tate bears the burden

Court of Appeals of New Mexico

Filed 6/10/2024 12:04 PM



Ramon J. Maestas  
Chief Clerk

**No. A-1-CA-41663**

1 of establishing a probation violation with a reasonable certainty.” *See State v. Leon*,  
2 2013-NMCA-011, ¶ 36, 292 P.3d 493. “To establish a violation of a probation  
3 agreement, the obligation is on the [s]tate to prove willful conduct on the part of the  
4 probationer so as to satisfy the applicable burden of proof.” *In re Bruno R.*, 2003-  
5 NMCA-057, ¶ 11, 133 N.M. 566, 66 P.3d 339; *see also State v. Martinez*, 1989-  
6 NMCA-036, ¶ 8, 108 N.M. 604, 775 P.2d 1321 (explaining that probation should  
7 not be revoked where the violation is not willful, in that it resulted from factors  
8 beyond a probationer’s control).

9 {3} The State’s petition to revoke probation and a subsequent addendum alleged  
10 that Defendant violated two conditions of probation, by failing to get permission to  
11 leave Luna County and failing to truthfully and accurately communicate with his  
12 probation officer. [RP 178-79, 197-98] The record indicates that the State presented  
13 evidence that supported the district court’s findings that Defendant willfully left  
14 Luna County to travel to Grant County without permission and that he did not  
15 truthfully and accurately communicate other travel plans. [1 RP 224-28, 253-54]

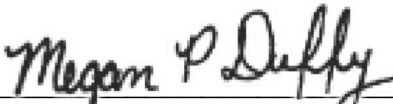
16 {4} Defendant’s argument that his violations were “de minimis” is in effect a  
17 claim that the revocation was based on mere technical violations. However, as  
18 Defendant acknowledges, the Sixth Judicial District does not have a technical  
19 violation program. [DS 3] *See generally* Rule 5-805(C) NMRA (providing that  
20 judicial districts may establish technical violation programs); *Cerrillos Gravel*

1 *Prods., Inc. v. Bd. of Cnty. Comm'rs of Santa Fe Cnty.*, 2004-NMCA-096, ¶ 10, 136  
2 N.M. 247, 96 P.3d 1167 (“The word ‘may’ is permissive, and is not the equivalent  
3 of ‘shall,’ which is mandatory.”).

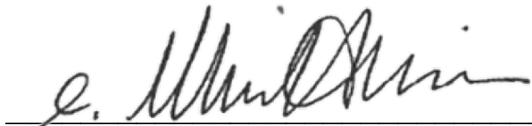
4 {5} Defendant claims that revocation based on mere technical violations amounts  
5 to a violation of due process. However, Defendant’s initial sentence of a conditional  
6 discharge included a provision that there would be “zero tolerance” for any violation  
7 of probation. [RP 152] Defendant acknowledged this as a special condition of his  
8 probation. [RP 162] The State still had to establish a violation under the “reasonable  
9 certainty” standard. *See State v. Green*, 2015-NMCA-007, ¶ 22, 341 P.3d 10.  
10 Moreover, involvement in a technical violation program would have required  
11 Defendant to give up certain due process rights. *See State v. Aslin*, 2020-NMSC-004,  
12 ¶ 11, 457 P.3d 249 (discussing waiver of due process rights for entry into the  
13 program). As we have stated, the evidence established that Defendant willfully left  
14 Luna County without permission, and that he did not accurately and truthfully  
15 communicate with his probation officer. In the absence of a governing technical  
16 violation program, this is sufficient to support the revocation of Defendant’s  
17 probation.

18 {6} For the reasons set forth above, we affirm.

1 {7} IT IS SO ORDERED.

2   
3 \_\_\_\_\_  
MEGAN P. DUFFY, Judge

4 WE CONCUR:

5   
6 \_\_\_\_\_  
J. MILES HANISEE, Judge

7   
8 \_\_\_\_\_  
JACQUELINE R. MEDINA, Judge