

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

2 **STATE OF NEW MEXICO,**

Court of Appeals of New Mexico  
Filed 10/21/2024 11:58 AM

3 Plaintiff-Appellee,



Ramon J. Maestas  
Chief Clerk

4 v.

**No. A-1-CA-41604**

5 **DOMINIC A. ARMIJO,**

6 Defendant-Appellant.

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

8 **Stephen P. Ochoa, District Court Judge**

9 Raúl Torrez, Attorney General  
10 Santa Fe, NM  
11 Van Snow, Deputy Solicitor General  
12 Albuquerque, 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 **HENDERSON, Judge.**

20 {1} This matter was submitted to this Court on Defendant's brief in chief pursuant  
21 to the Administrative Order for Appeals in Criminal Cases from the Second,  
22 Eleventh, and Twelfth Judicial District Courts in *In re Pilot Project for Criminal*  
23 *Appeals*, No. 2022-002, effective November 1, 2022. Following consideration of the

1 brief in chief, this Court assigned this matter to Track 2 for additional briefing. Now  
2 having considered the brief in chief and answer brief, we affirm for the following  
3 reasons.

4 {2} Defendant appeals the district court’s order continuing his probation. [RP 134]

5 According to Defendant, he was denied due process when the district court failed to  
6 allow him to “confront and cross-examine the alleged victim” of a battery charge,  
7 which was the basis for the State’s motion to revoke probation. [BIC 5; RP 82, 90]

8 In response, the State asserts that Defendant’s appeal is moot and that Defendant did  
9 not have a right to confront the victim of the alleged battery. [AB 2, 5] Defendant  
10 declined to file a reply brief in this case, and as such, has not responded to the State’s  
11 assertion that this appeal is moot. [RB 1-2] We agree with the State and dismiss  
12 Defendant’s appeal without considering whether the district court erred in  
13 continuing Defendant’s probation.

14 {3} The State moved to revoke Defendant’s probation for having “violated the  
15 laws or ordinances of the State of New Mexico, or any jurisdiction and/or  
16 endangered the person or property of another.” [RP 82] The district court held a  
17 hearing on the matter, after which it found that Defendant had “violated the terms of  
18 probation” but declined to revoke Defendant’s probation; instead, the district court  
19 ordered that “[D]efendant’s probation is continued.” [RP 134; 10/2/2023 CD  
20 9:47:00] In announcing its decision, the district court specifically stated, it was “not

1 even going to revoke [Defendant’s] probation.” [10/2/2023 CD 9:47:00] Defendant  
2 asks that this Court “reverse his probation revocation.” [BIC 1, 12]

3 {4} The district court in this case explicitly declined to revoke Defendant’s  
4 probation, and instead chose to continue Defendant’s original probation. *See* NMSA  
5 1978, § 31-21-15(B) (2016) (stating that, after a probation violation is established,  
6 the district court may continue the original probation or revoke the probation and  
7 order a new probation). The district court’s order did not change or add to the terms  
8 of Defendant’s probation. As such, Defendant in this case is not entitled to appeal  
9 the district court’s order, being neither adversely affected by it, nor an aggrieved  
10 party as a result of it. *See State v. Castillo*, 1980-NMCA-020, ¶ 4, 94 N.M. 352, 610  
11 P.2d 756 (stating that the New Mexico Constitution provides an aggrieved party with  
12 an absolute right to at least one appeal, and defining an aggrieved party as “one  
13 whose personal interests are adversely affected by an order of the court”).

14 {5} Moreover, even if we were to conclude Defendant is entitled to appeal the  
15 district court’s continuation of his probation, we conclude that we need not reach the  
16 merits of Defendant’s argument, as his appeal is moot. In general, this Court will not  
17 decide a moot appeal. *See State v. Sergio B.*, 2002-NMCA-070, ¶ 9, 132 N.M. 375,  
18 48 P.3d 764. “An appeal is moot when no actual controversy exists, and an appellate  
19 ruling will not grant the appellant any actual relief.” *Id.*; *see State v. Favela*, 2013-  
20 NMCA-102, ¶ 13, 311 P.3d 1213 (stating that an appeal is moot when no relief can

1 be granted to the appellant). Having declined to file a reply brief, Defendant has not  
2 identified any argument or authority to suggest that this Court could afford him any  
3 actual relief. *See Delta Automatic Sys., Inc. v. Bingham*, 1999-NMCA-029, ¶ 31, 126  
4 N.M. 717, 974 P.2d 1174 (concluding that the appellant has conceded an argument  
5 that was raised in the appellee’s answer brief but not addressed in the appellant’s  
6 reply brief); *see generally State v. Coble*, 2023-NMCA-079, ¶ 16 n.7, 536 P.3d 519  
7 (acknowledging that a defendant’s failure to dispute the state’s argument in a reply  
8 brief may be treated as a concession).

9 {6} We acknowledge that this Court can consider a moot appeal when the  
10 appellant suffers from collateral consequences as a result of the district court’s  
11 ruling, *see Sergio B.*, 2002-NMCA-070, ¶ 10 (identifying “continuing collateral  
12 consequences” warranting review of a moot appeal as “mandatory sentence  
13 increases for subsequent offenses, limitations on eligibility for . . . employment, and  
14 voting restrictions”), but Defendant has failed to identify any collateral  
15 consequences arising from the district court’s order continuing Defendant’s  
16 probation. *Cf. Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d  
17 53 (“To rule on an inadequately briefed issue, this Court would have to develop the  
18 arguments itself, effectively performing the parties’ work for them.”). In addition,  
19 Defendant has not provided any citations to authority to suggest that an order  
20 continuing probation leads to collateral consequences warranting consideration of

1 an otherwise moot appeal. *See State v. Casares*, 2014-NMCA-024, ¶ 18, 318 P.3d  
2 200 (stating that “absent cited authority to support an argument, we assume no such  
3 authority exists”). Lastly, although this Court may review moot cases that present  
4 issues of substantial public interests or which are capable of repetition yet evade  
5 review, Defendant does not argue that the issue raised here qualifies for review under  
6 either of those standards. *See Delta Automatic Sys., Inc.*, 1999-NMCA-029, ¶ 31;  
7 *Coble*, 2023-NMCA-079, ¶ 16 n.7. Accordingly, we conclude that Defendant’s  
8 appeal is moot.

9 {7} For the foregoing reasons, we affirm.

10 {8} **IT IS SO ORDERED.**

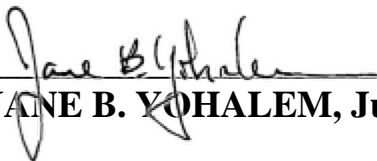


11  
12 **SHAMMARA H. HENDERSON, Judge**

13 **WE CONCUR:**



14  
15 **ZACHARY A. IVES, Judge**



16  
17 **JANE B. VOHALEM, Judge**