


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

Court of Appeals of New Mexico  
Filed 12/17/2024 10:37 AM

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,



Ramon J. Maestas  
Chief Clerk

4 v.

**No. A-1-CA-41981**

5 **ADAAM VASQUEZ a/k/a**

6 **ADAM VASQUEZ a/k/a**

7 **ADAAM A. VASQUEZ,**

8 Defendant-Appellant.

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

10 **Angie K. Schneider, 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 **WRAY, 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 appeals from the revocation of his probation, arguing that there was  
5 insufficient evidence to prove his probation violations were willful. [BIC 7-9] “To  
6 establish a violation of a probation agreement, the obligation is on the [s]tate to prove  
7 willful conduct on the part of the probationer so as to satisfy the applicable burden  
8 of proof.” *In re Bruno R.*, 2003-NMCA-057, ¶ 11, 133 N.M. 566, 66 P.3d 339; *see*  
9 *State v. Martinez*, 1989-NMCA-036, ¶ 8, 108 N.M. 604, 775 P.2d 1321 (explaining  
10 that probation should not be revoked where the violation is not willful, in that it  
11 resulted from factors beyond a probationer’s control).

12 {3} Defendant pled no contest to felony offenses pursuant to a plea agreement and  
13 was given a suspended sentence and placed on probation. [1 RP 163, 170-74] The  
14 State filed a petition for probation revocation alleging in pertinent part that  
15 Defendant violated his probation by possessing firearms and ammunition and failing  
16 to seek permission before changing his residence. [1 RP 224] At the probation  
17 violation hearing, Defendant’s probation officer, PO Cutts, testified that he  
18 conducted a home visit at the address on file for Defendant. [BIC 1] PO Cutts  
19 understood that Defendant, who was present at the time of the visit, shared the home  
20 with his girlfriend and their children. [BIC 1] During the home visit, PO Cutts

1 discovered a rifle, a Glock case that did not contain the Glock but did contain related  
2 items, a loaded magazine for an AR pistol, and two loaded handguns. [BIC 2] PO  
3 Cutts testified that when asked about the items, Defendant stated that he and his  
4 girlfriend sold the Glock and the AR pistol, but that he had forgotten about the loaded  
5 magazine. [BIC 2] Defendant further stated that the two handguns belonged to his  
6 girlfriend and he did not know the handguns were in the house, although he also  
7 acknowledged that there was no place else to store the handguns on the property.  
8 [BIC 2] The district court also heard testimony from a sheriff's deputy regarding a  
9 post-arrest interview in which Defendant stated he had been staying with his mother  
10 for the past two weeks because he and his girlfriend had been arguing. [BIC 3]  
11 Defendant's girlfriend also testified at the hearing, confirming that the guns were  
12 hers and that she had brought them into the house while Defendant was staying with  
13 his mother. [BIC 4]

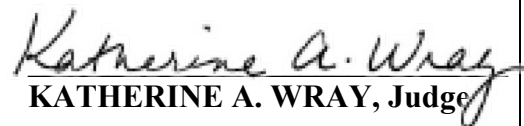
14 {4} Following closing arguments, in which Defendant argued that he attempted to  
15 report his change of residence, the district court noted there was no testimony  
16 supporting such a finding and the State had met its burden of proving a violation on  
17 that basis as well as a technical violation based on the ammunition found inside the  
18 home. [BIC 5-6] The court clarified that it was not finding a violation based on the  
19 firearms. [BIC 6] The district court's order revoking probation followed. [2 RP 308]

1 {5} Defendant does not assert error as to the district court’s revocation based on  
2 his failure to seek permission to change his residence, and Defendant acknowledges  
3 on appeal that he did not present evidence below to rebut such allegation. [BIC 5]  
4 Accordingly, affirmance would be proper on this basis alone. *See State v. Jimenez*,  
5 2003-NMCA-026, ¶¶ 5, 10-11, 17, 133 N.M. 349, 62 P.3d 1231 (observing that a  
6 probation officer’s testimony that the defendant had failed to report was sufficient  
7 to support the revocation of his probation), *rev’d on other grounds*, 2004-NMSC-  
8 012, 135 N.M. 442, 90 P.3d 461. Rather, Defendant contends that the revocation  
9 order was not supported by sufficient evidence because the State failed to prove a  
10 willful violation, given Defendant’s assertion that he did not know that the  
11 ammunition was in his home. [BIC 7-9] While a probationer may seek to establish  
12 that his failure to comply was not willful, this usually requires a demonstration that  
13 the violation “resulted from factors beyond his control and through no fault of his  
14 own.” *Martinez*, 1989-NMCA-036, ¶ 8; *see also State v. Williams*, 2021-NMCA-  
15 021, ¶ 6, 489 P.3d 949 (discussing that if the probation violation “resulted from  
16 factors beyond a probationer’s control, probation may not be revoked.” (alteration,  
17 internal quotation marks, and citations omitted)). Moreover, “[o]nce the [s]tate  
18 offers proof of a breach of a material condition of probation, the defendant must  
19 come forward with evidence to excuse non-compliance.” *Leon*, 2013-NMCA-011,  
20 ¶ 36 (internal quotation marks and citation omitted).

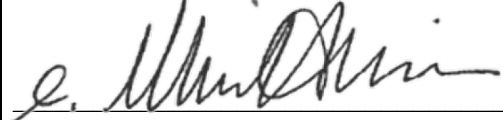
1 {6} It is not an abuse of discretion for a district court to find that a defendant  
2 willfully violated their probation where such defendant failed to prove that the  
3 violation “resulted from factors beyond his control.” *State v. Aslin*, 2018-NMCA-  
4 043, ¶ 11, 421 P.3d 843, *rev’d on other grounds*, 2020-NMSC-004, 457 P.3d 249.  
5 Additionally, the district court was not required to credit Defendant’s contentions  
6 regarding his reasons for violating his probation or his lack of willfulness in doing  
7 so. *See generally State v. Ortiz*, 2017-NMCA-006, ¶ 18, 387 P.3d 323 (“It is within  
8 the 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). We therefore conclude that  
12 the evidence that ammunition was found in Defendant’s residence of record was  
13 sufficient to establish a willful violation of probation. *See Martinez*, 1989-NMCA-  
14 036, ¶ 8 (“[I]f [the] defendant fails to carry his burden, then the [district] court is  
15 within its discretion in revoking [the defendant’s probation].”).

16 {7} Based on the foregoing, we affirm.

17 {8} **IT IS SO ORDERED.**

18   
19 **KATHERINE A. WRAY, Judge**

1 WE CONCUR:

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3 J. MILES HANISEE, Judge

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5 SHAMMARA H. HENDERSON, Judge