


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

2 **STATE OF NEW MEXICO,**

Court of Appeals of New Mexico  
Filed 1/9/2025 1:33 PM

3 Plaintiff-Appellee,



Ramon J. Maestas  
Chief Clerk

4 v.

**No. A-1-CA-42150**

5 **OMAR TORRES,**

6 Defendant-Appellant.

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

8 **James Lawrence Sanchez, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender

13 Kathleen T. Baldrige, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **WRAY, Judge.**

18 {1} Defendant appeals the district court's order revoking his probation and

19 ordering him to serve the balance of his sentence. We issued a notice of proposed

20 summary disposition proposing to affirm, and Defendant has responded with a

21 timely memorandum in opposition, which we have duly considered. We remain

1 unpersuaded that our initial proposed disposition was incorrect, and we therefore  
2 affirm.

3 {2} Defendant admitted to violating a term of his probation requiring that he  
4 comply with a social media policy to refrain from using certain types of cell phone  
5 applications. [RP 80-81; MIO 2] In his memorandum in opposition, Defendant does  
6 not challenge the sufficiency of the evidence to establish the violation, but continues  
7 to argue that the district court erred by refusing to continue his probation and allow  
8 him to complete treatment for his underlying issues. [MIO 1] *See State v. Orquiz*,  
9 2003-NMCA-089, ¶ 4, 134 N.M. 157, 74 P.3d 91 (“We review a trial court’s  
10 probation revocation decision under an abuse of discretion standard.”).

11 {3} However, once a violation of probation is established, the district court has  
12 broad discretion to continue the original probation, revoke the probation, impose  
13 additional conditions, or order a probationer to serve the balance of an imposed  
14 sentence or any lesser sentence. *See* NMSA 1978, § 31-21-15(B) (2016); *see also*  
15 *State v. Rapchack*, 2011-NMCA-116, ¶ 16, 150 N.M. 716, 265 P.3d 1289 (“Courts  
16 have wide discretion to deal with probation violations.”); *State v. Vasquez*, 2010-  
17 NMCA-041, ¶ 41, 148 N.M. 202, 232 P.3d 438 (providing that a district court does  
18 not abuse its sentencing discretion “if the sentence imposed is authorized by law”).

19 {4} Although Defendant contends that lesser sanctions would have been  
20 appropriate in this case, the district court could reasonably differ in its assessment.

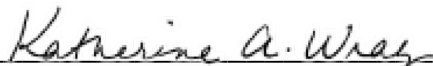
1 *See State v. Lopez*, 2007-NMSC-011, ¶ 12, 141 N.M. 293, 154 P.3d 668 (“By failing  
2 to comply with probation conditions, a defendant demonstrates that clemency is not  
3 appropriate because he or she is not willing or able to be rehabilitated. It follows that  
4 the court must have broad power to adjust a defendant’s sentence by revoking  
5 probation when necessary.”). Ultimately, the district court was under no obligation  
6 to continue Defendant’s probation. *See State v. Mendoza*, 1978-NMSC-048, ¶ 5, 91  
7 N.M. 688, 579 P.2d 1255 (“Probation is not a right but a privilege.”).

8 {5} Defendant also contends that the district court improperly relied on unproven  
9 alleged probation violations against him in making its decision to revoke. [MIO 4]  
10 Defendant points to closing arguments made by the prosecutor and his probation  
11 officer at the revocation hearing in which they urged that Defendant should be  
12 remanded to custody due to the nature and extent of the allegations against him.  
13 Defendant, however, does not inform us whether he objected to these arguments  
14 below, *see generally* Rule 12-321 NMRA (preservation requirement), nor does  
15 Defendant provide the factual context for the statements or explain why it would  
16 have been error for the district court to rely on them, *see Headley v. Morgan Mgmt.*  
17 *Corp.*, 2005-NMCA-045, ¶ 15, 137 N.M. 339, 110 P.3d 1076 (declining review  
18 absent “facts that would allow us to evaluate [the] claim” or explanation of the  
19 argument). We therefore presume the correctness and regularity of the proceeding  
20 below. *See In re Ernesto M., Jr.*, 1996-NMCA-039, ¶ 19, 121 N.M. 562, 915 P.2d

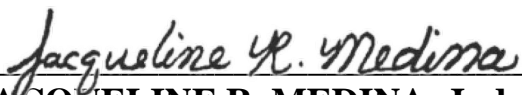
1 318 (“Where there is a doubtful or deficient record, every presumption must be  
2 indulged by the reviewing court in favor of the correctness and regularity of the  
3 lower court’s judgment.”).

4 {6} For these reasons, we affirm the district court.

5 {7} **IT IS SO ORDERED.**

6   
7 **KATHERINE A. WRAY, Judge**

8 **WE CONCUR:**

9   
10 **JACQUELINE R. MEDINA, Judge**

11   
12 **GERALD E. BACA, Judge**