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

Court of Appeals of New Mexico

Filed 4/15/2025 8:40 AM

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,



Stephanie Latimer Davis

Acting Chief Clerk

4 v.

No. A-1-CA-42139

5 **ANDREW JAMAL HOWARD,**

6 Defendant-Appellant.

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

8 **Mark Terrence Sanchez, District Court Judge**

9 Raúl Torrez, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender

13 Joelle N. Gonzales, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **HANISEE, Judge.**

18 {1} Defendant appeals from the district court's order revoking his probation. This
19 Court issued a calendar notice proposing to affirm. Defendant filed a memorandum
20 in opposition, which we have duly considered. Unpersuaded, we affirm.

21 {2} Defendant continues to maintain, based on the same theories, that
22 uncorroborated officer testimony asserting that he was unsuccessfully discharged

1 from a rehabilitation facility was insufficient to support the revocation of his
2 probation. [MIO 1-5] Our notice of proposed disposition proposed to affirm because
3 Defendant did not contest this evidence and “therefore the officer’s statements did
4 not need to be further corroborated.” [CN 2] As such, sufficient evidence supports
5 Defendant’s probation revocation. [CN 3] Defendant similarly maintains that the
6 district court violated his right of allocution based on the same theories presented in
7 his docketing statement. [MIO 5-6] We proposed to conclude that Defendant “was
8 afforded the opportunity to allocute because Defendant addressed the district court
9 after the close of evidence but before sentencing,” even though the district court may
10 not have formally asked Defendant if he would like to speak. [CN 4]

11 {3} Defendant does not now direct this Court to any new fact, law, or argument
12 that persuades us that our notice of proposed disposition was incorrect as to either
13 issue Defendant raises on appeal. [MIO 7-8] *See Hennessy v. Duryea*, 1998-NMCA-
14 036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly held that, in
15 summary calendar cases, the burden is on the party opposing the proposed
16 disposition to clearly point out errors in fact or law.”); *State v. Mondragon*, 1988-
17 NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that “[a] party responding
18 to a summary calendar notice must come forward and specifically point out errors
19 of law and fact,” and the repetition of earlier arguments does not fulfill this
20 requirement), *superseded by statute on other grounds as stated in State v. Harris*,

1 2013-NMCA-031, ¶ 3, 297 P.3d 374. We therefore remain unpersuaded that
2 Defendant's probation revocation was supported by insufficient evidence or that the
3 district court violated Defendant's right of allocution.

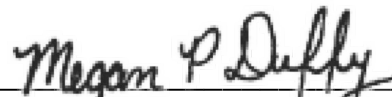
4 {4} For the reasons stated in our notice of proposed disposition and herein, we
5 affirm.

6 {5} **IT IS SO ORDERED.**

7 
8 _____
J. MILES HANISEE, Judge

9 **WE CONCUR:**

10 
11 _____
JENNIFER L. ATTREP, Judge

12 
13 _____
MEGAN P. DUFFY, Judge