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3 Plaintiff-Appellee,

Court of Appeals of New Mexico
Filed 12/1/2025 8:29 AM

Mark Reynolds

4 v. **No. A-1-CA-42587**

5 | JUAN MARCOS ELIZALDEZ,

6 Defendant-Appellant.

7 APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY
8 Angie K. Schneider, District Court Judge

9 | Raúl Torrez, Attorney General

10 | Santa Fe, NM

11 | Kellie Garcia, Assistant Solicitor General

12 | Albuquerque, NM

13 | for Appellee

14 | Bennett J. Baur, Chief Public Defender

15 | Allison H. Jaramillo, Assistant Appellate Defender

16 | Santa Fe, NM

17 | for Appellant

MEMORANDUM OPINION

19 MEDINA, Chief Judge.

20 {1} This matter was submitted to the 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, the Court assigned this matter to Track 2 for additional briefing. Now
2 having considered the brief in chief, the answer brief, and the reply brief, we affirm
3 for the following reasons.

4 {2} Defendant appeals from the district court’s order revoking his probation,
5 arguing that the district court erred in finding that he absconded from supervision
6 and was a fugitive. [3 RP 560-561] *See* NMSA 1978, § 31-21-15(C) (2016) (stating
7 that a defendant is a “fugitive from justice” if “a warrant for the return of a
8 probationer cannot be served”). We review the district court’s fugitive finding for
9 substantial evidence. *See State v. Jimenez*, 2004-NMSC-012, ¶ 14, 135 N.M. 442,
10 90 P.3d 461. “Substantial evidence is relevant evidence that a reasonable mind might
11 accept as adequate to support a conclusion.” *State v. Rojo*, 1999-NMSC-001, ¶ 19,
12 126 N.M. 438, 971 P.2d 829. Under this review, we “resolve all disputed facts in
13 favor of the [district] court’s decision, indulge all reasonable inferences in support
14 of that decision, and disregard all inferences to the contrary.” *Jimenez*, 2004-NMSC-
15 012, ¶ 14 (internal quotation marks and citation omitted).

16 {3} A defendant is entitled to credit for all time served on probation unless the
17 district court determines that the defendant is a fugitive. *See* § 31-21-15(B), (C)
18 (providing that “credit shall be given for time served on probation” but “[i]f it is
19 found that a warrant for the return of a probationer cannot be served, the probationer
20 is a fugitive from justice”); *State v. Neal*, 2007-NMCA-086, ¶ 30, 142 N.M. 487,

1 167 P.3d 935 (“A fugitive is not entitled to probation credit from the date of the
2 violation to the date of arrest.”).

3 {4} “The [s]tate bears the burden of proving that the defendant is a fugitive” and
4 must show either “(1) it unsuccessfully attempted to serve the warrant on the
5 defendant *or* (2) any attempt to serve the defendant would have been futile.” *Neal*,
6 2007-NMCA-086, ¶ 30. In addition, “the state must ordinarily prove that it issued a
7 warrant for the probationer’s arrest and entered it in the National Crime Information
8 Center (NCIC) database in order to support a finding of fugitive status.” *Id.* ¶ 31.
9 “At a minimum, the state must present some evidence that raises a reasonable
10 inference that the warrant could not be served with reasonable diligence.” *Id.* ¶ 34
11 (internal quotation marks and citation omitted).

12 {5} The relevant factual and procedural history of this case is as follows.
13 Defendant pleaded no contest to felony charges and received a conditional discharge
14 and a five-year term of probation. [1 RP 115, 120, 122] Thereafter, Defendant’s
15 probation was revoked and reinstated several times, and Defendant was ultimately
16 ordered to complete a six-month rehabilitation program at New Mexico Wellness on
17 April 17, 2023. [2 RP 441]

18 {6} In June 2023, the State filed a petition to revoke probation, alleging that
19 Defendant had failed to report, failed to complete treatment, and was an absconder
20 as of May 30, 2023. [2 RP 465-66] On June 21, 2023, the district court issued a

1 bench warrant, but the warrant was not entered into the NCIC database. [2 RP 481,]
2 After Defendant did not appear for an adjudicatory hearing on August 28, 2023, the
3 district court issued a second bench warrant, and this warrant was entered into the
4 NCIC database. [2 RP 491, 495, 500] The June 21, 2023 warrant was ultimately
5 served on Defendant on June 2, 2024. [3 RP 501-503]

6 {7} Following Defendant's arrest, the district court held an adjudicatory hearing
7 on August 29, 2024, at which two officials with the Alamogordo Probation and
8 Parole Office (APPO) testified. [3 RP 541] Officer Peter Sanders testified that
9 Defendant was declared an absconder by APPO on May 15, 2023, and on May 18,
10 2023, two probation officers made a field call to Defendant's residence on file. [BIC
11 3; CD 8/29/2024: 3:45:55-3:46:00; 3:54:49-3:55:13] Officer Sanders also testified
12 that after the warrant was issued, the matter was referred to the STIU, which is a
13 fugitive apprehension unit "responsible for tracking down absconders." Officer
14 Sanders testified that he provided all the information he had regarding Defendant's
15 possible location to the STIU, but the efforts with STIU were not successful. [CD
16 8/29/2024: 3:54:15-3:54:37; 3:56:49-3:57:35] Officer Craig Quiroga testified that
17 after learning that Defendant was discharged from the rehabilitation program, he
18 called Defendant's grandmother, who said that Defendant was in Alamogordo.
19 Officer Quiroga told Defendant's grandmother to tell Defendant to report
20 immediately, and she indicated that she would do so if she saw him. [CD 8/29/2024:

1 4:01:10-4:01:55] Based on this evidence, the district court ultimately concluded that
2 the State had proved Defendant was a fugitive from May 30, 2023 to June 2, 2024.
3 [3 RP 561]

4 {8} On appeal, Defendant argues that the district court's finding that he was a
5 fugitive was not supported by sufficient evidence. Specifically, Defendant argues
6 that there was no evidence that the June 21, 2023 bench warrant was entered into the
7 NCIC database.¹ [BIC 8-9] Defendant also argues that, irrespective of whether the
8 warrant was entered into NCIC, the State failed to present sufficient evidence that it
9 attempted to serve the warrant or that the warrant could not be served because there
10 was no evidence showing what specific steps the STIU took after the matter was
11 referred by APPO. [BIC 12]

12 {9} In order to establish that a probationer is a fugitive within the meaning of
13 Section 31-21-15(C), the State must demonstrate that it was diligent in attempting
14 to bring the probationer before the court. *See Jimenez*, 2004-NMSC-012, ¶ 8 (“This
15 test . . . requir[es] the [s]tate to act with due diligence in prosecuting defendants who
16 violate the terms of their probation.”). In this case, two bench warrants were issued

¹The State argues that Defendant failed to preserve this argument because it was not raised in the district court. [AB 8-9] However, the State had the burden to present sufficient evidence of Defendant's status as a fugitive. *See Neal*, 2007-NMCA-086, ¶ 30. And this Court has held that challenges to the sufficiency of the evidence may be raised at any time, including for the first time on appeal. *See State v. Sotelo*, 2013-NMCA-028, ¶ 30, 296 P.3d 1232. We therefore reject this argument.

1 for Defendant's arrest within a relatively short period of time: the June 21, 2023
2 bench warrant was issued at the request of APPO, and the August 29, 2023 bench
3 warrant issued after Defendant's failure to appear at an adjudicatory hearing. The
4 record only reflects entry of the August 29, 2023 bench warrant into the NCIC
5 database, and not the June 21, 2023 bench warrant that was served on Defendant.

6 {10} To the extent Defendant argues that the State failed to prove diligence because
7 the August 29, 2023 bench warrant was not ultimately served on him, we are
8 unpersuaded. The entry of the August 29, 2023 bench warrant into NCIC weighs in
9 favor of the State's diligence, even though the June 21, 2023 bench warrant was
10 ultimately the one served, because it provided the necessary mechanism to secure
11 Defendant's arrest and appearance before the district court. *See id.* ¶ 15 (discussing
12 that entry of a warrant into the NCIC database allows participating law enforcement
13 agencies nationwide to check the criminal history of any person stopped and is
14 relevant to show that state acted with due diligence). To the extent Defendant
15 suggests that entry of the same warrant into the NCIC as the one served is required,
16 we are unpersuaded, as Defendant cites to no authority in support of this proposition.

17 *See generally Neal*, 2007-NMCA-086, ¶ 31 (recognizing that "the state must
18 ordinarily prove that it issued *a* warrant for the probationer's arrest and entered it in
19 the [NCIC] database in order to support a finding of fugitive status." (emphasis
20 added)); *State v. Vigil-Giron*, 2014-NMCA-069, ¶ 60, 327 P.3d 1129 ("[A]ppellate

1 courts will not consider an issue if no authority is cited in support of the issue and
2 that, given no cited authority, we assume no such authority exists.”).

3 {11} Moreover, the parties do not dispute that the June 21, 2023 warrant was
4 referred to the STIU fugitive apprehension unit, along with all information APPO
5 had regarding Defendant’s location. [CD 8/29/2024: 3:51:00-3:45:44; 3:57:08-
6 3:57:44] The State therefore made efforts to serve this warrant. *Cf. State v. Thomas*,
7 1991-NMCA-131, ¶ 10, 113 N.M. 298, 825 P.2d 231 (“A bare showing that the
8 warrant was issued but not served is not sufficient to establish that a probationer is
9 a fugitive.”); *Neal*, 2007-NMCA-086, ¶ 33 (determining that the state’s efforts were
10 insufficient where the record established only that the warrant was entered into
11 NCIC, but there was no evidence of any attempts to serve the defendant or locate
12 him).

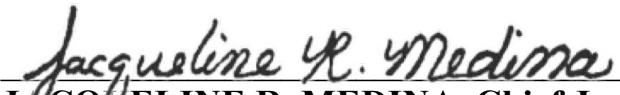
13 {12} To the extent Defendant argues that the State was required to present further
14 evidence regarding STIU’s specific efforts to serve the warrant, we disagree. In *State*
15 *v. Apache*, 1986-NMCA-051, ¶ 6, 104 N.M. 290, 720 P.2d 709, this Court held that
16 the state’s efforts were sufficient where the probation officer, after issuance of a
17 bench warrant, followed standard procedures” by listing the warrant in the NCIC
18 database and sending two bulletins six months apart to authorities in Socorro, the
19 location of the defendant’s most recent address. This Court determined that “[t]he
20 evidence and the inferences therefrom adequately support the [district] court’s

1 determination that defendant was a fugitive.” *Id.* ¶ 17. In so doing, the Court
2 specifically rejected the defendant’s argument that the state was required to present
3 evidence that the authorities in Socorro had received the messages or had in fact
4 attempted to serve the warrant, explaining that “the arrest warrant was issued and
5 placed in the normal channels for service.” *Id.* ¶¶ 14-17. There was also evidence
6 that the state made efforts to locate the defendant prior to the issuance of the bench
7 warrant by visiting his last known residence and a relative’s home. *Id.* ¶ 4.

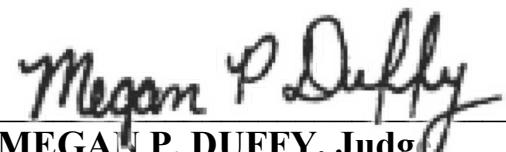
8 {13} Similarly in this case, there was evidence before the district court that a
9 warrant for Defendant’s arrest was entered into the NCIC, a second bench warrant
10 was referred to the STIU along with information to aid in his apprehension, and prior
11 to issuance of the warrants, probation officials looked for Defendant at his last
12 known address. Based on this evidence, we believe that the district court could
13 reasonably infer that a warrant could not be successfully served on Defendant. *See*
14 *id.* ¶ 16 (stating that “[i]n determining sufficiency of the evidence, all disputed facts
15 are resolved in favor of the decision below, all reasonable inferences are indulged in
16 support of that decision, and all inferences to the contrary are disregarded”).
17 Accordingly, we hold that there was sufficient evidence to support the district court’s
18 determination that Defendant was a fugitive and is not entitled to credit for time
19 served on probation. *See id.* ¶ 18; § 31-21-15(C).

1 {14} For these reasons, we affirm the district court's order revoking Defendant's
2 probation and its finding that Defendant was a fugitive.

3 {15} **IT IS SO ORDERED.**

4 
5 JACQUELINE R. MEDINA, Chief Judge

6 WE CONCUR:

7 
8 MEGAN P. DUFFY, Judge

9 
10 ZACHARY A. IVES, Judge