

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Court of Appeals of New Mexico

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Mark Reynolds

STATE OF NEW MEXICO,

Plaintiff-Appellee,

v.

No. A-1-CA-42440

ANDREW JAMAL MILLER,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNAILLO COUNTY

Angela Jewell, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

for Appellee

Bennet J. Baur, Chief Public Defender

Thomas J. Lewis, Assistant Appellate Defender

Santa Fe, NM

for Appellant

MEMORANDUM OPINION

WRAY, Judge.

{1} This matter was submitted to the Court on the brief in chief pursuant to the
Administrative Order for Appeals in Criminal Cases from the Second, Eleventh, and
Twelfth Judicial District Courts in *In re Pilot Project for Criminal Appeals*, No.
2022-002, effective November 1, 2022. Having considered the brief in chief,
concluding the briefing submitted to the Court provides no possibility for reversal,

1 and determining that this case is appropriate for resolution on Track 1 as defined in
2 that order, we affirm for the following reasons.

3 {2} Defendant appeals from the district court's order revoking his probation.
4 [3827 Vol. 5 RP 1243-45; 595 Vol. 2 RP 307-09; BIC 1] The district court sentenced
5 Defendant to 323 days incarceration, followed by reinstatement to probation. [3827
6 Vol. 5 RP 1212-14; 595 Vol. 2 RP 276-78; BIC 2] Since filing his appeal, Defendant
7 has served his sentence and was released on supervised probation. [BIC 2, 4]

8 **DISCUSSION**

9 {3} Initially, we note that Defendant's release from incarceration may have
10 rendered this case moot. *See Gunaji v. Macias*, 2001-NMSC-028, ¶ 9, 130 N.M. 734,
11 31 P.3d 1008 ("A case is moot when no actual controversy exists, and the court
12 cannot grant actual relief." (internal quotation marks and citations omitted)).
13 Defendant argues, however, that the issues raised are capable of repetition, among
14 other reasons, because others under dual supervision by the parole board and
15 probation department may face similar revocations of parole and probation. [BIC 4]
16 *See id.* ¶ 10 (stating that an appellate court "may review moot cases that present
17 issues of substantial public interest or which are capable of repetition yet evade
18 review"). To the extent that this case is moot, we agree with Defendant and proceed
19 to the merits of Defendant's appeal. *See Garcia v. Dorsey*, 2006-NMSC-052, ¶ 16,

1 140 N.M. 746, 149 P.3d 62 (stating that mootness may be overcome even where a
2 case is capable of repetition by different parties).

3 {4} Defendant argues that the distinction made in NMSA 1978, Section 31-21-5
4 (2023) between probation, under which a defendant is released by a court, *see* § 31-
5 21-5(A), and parole, under which a defendant is released by the parole board, *see*
6 § 31-21-5(B), rendered the district court without jurisdiction to hear the motion to
7 revoke probation while he was on parole. [BIC 5-7]. We disagree. This Court has
8 specifically held that “the [district] court could revoke defendant’s probation for
9 violation of probation conditions while defendant was serving [their] parole.” *State*
10 *v. Martinez*, 1989-NMCA-036, ¶ 13, 108 N.M. 604, 775 P.2d 1321. Defendant
11 argues that *Martinez* was wrongly decided, and he urges us to overrule it. [BIC 6-7]
12 We decline to do so.

13 {5} Under the doctrine of stare decisis, this Court will not overrule one of our
14 prior cases absent a compelling reason. *See State v. Dirickson*, 2024-NMCA-038,
15 ¶ 27, 547 P.3d 781. We are not persuaded that *Martinez* is a remnant of an abandoned
16 doctrine, has proven to be unworkable, or should be overruled due to changed
17 circumstances. *See State v. Montoya*, 2013-NMSC-020, ¶ 40, 306 P.3d 426 (citing
18 factors that should be considered before overruling controlling precedent). We
19 therefore decline Defendant’s invitation to overrule *Martinez*, and we conclude the
20 district court had jurisdiction to consider the motion to revoke probation.

1 {6} Defendant next argues that revoking his probation and his parole for the same
2 conduct violated his right to be free from double jeopardy. [BIC 7-9] This Court has
3 held, however, that double jeopardy is not implicated in probation revocation
4 proceedings because such proceedings are not directed at punishing the original
5 activity, but instead at determining whether probation should continue. *State v. Neal*,
6 2007-NMCA-086, ¶ 43, 142 N.M. 487, 167 P.3d 935. Defendant argues that *Neal* is
7 distinguishable because Defendant “was sentenced in two separate parole and
8 probation hearings at two different times.” [BIC 9] Because *Neal* also involved two
9 different proceedings, *see* 2007-NMCA-086, ¶¶ 11-12, the distinction Defendant
10 attempts to make is unpersuasive. *Cf. In re Lucio F.T.*, 1994-NMCA-144, ¶¶ 2, 11,
11 13, 119 N.M. 76, 888 P.2d 958 (finding no double jeopardy violation where
12 respondent was sentenced in municipal court for alcohol possession and other
13 offenses, and had his juvenile probation revoked for the same conduct in a different
14 proceeding at a different time). Defendant also argues that *Neal* was wrongly
15 decided and we should “reconsider the constitutional violation implicit in the double
16 use of the same evidence for revocation” of probation and parole. [BIC 9] Because
17 Defendant does not present compelling reasons that would cause us to disregard the
18 doctrine of stare decisis, *see Montoya*, 2013-NMSC-020, ¶ 40, we therefore decline
19 to overrule *Neal*.

1 **CONCLUSION**

2 {7} We conclude that the district court had jurisdiction to revoke Defendant's
3 probation and that under *Neal*, the order revoking Defendant's probation does not
4 violate his right to be free from double jeopardy. *See Neal*, 2007-NMCA-086, ¶ 43.

5 {8} Based on the foregoing, we affirm.

6 {9} **IT IS SO ORDERED.**

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

9 **WE CONCUR:**

10 
11 **JACQUELINE R. MEDINA, Chief Judge**

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