

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

2 **STATE OF NEW MEXICO,**

Court of Appeals of New Mexico  
Filed 4/22/2026 8:59 AM

3 Plaintiff-Appellee,



Mark Reynolds

4 v.

**No. A-1-CA-42926**

5 **JAMES STEPHEN MARTIN,**

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 for Appellee

12 Lane+Linnenburger+Lane, LLP

13 Alicia C. Lopez

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **WRAY, Judge.**

18 {1} This matter was submitted to the Court on the brief in chief pursuant to the

19 Administrative Order for Appeals in Criminal Cases from the Second, Eleventh, and

20 Twelfth Judicial District Courts in *In re Pilot Project for Criminal Appeals*, No.

21 2022-002, effective November 1, 2022. Having considered the brief in chief,

22 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 and  
4 ordering him to serve three years of incarceration. [2 RP 319-23] Defendant also  
5 purports to appeal from the district court’s oral denial of his pro se motion for  
6 reduction of sentence. [BIC 1] On appeal, Defendant lists two claims of error: (1)  
7 the district court imposed an illegal sentence because it improperly gave Defendant  
8 credit only toward his probationary term and did not award him presentence  
9 confinement credit for the time he spent incarcerated before he was resentenced for  
10 the probation violation [BIC 5-10]; and (2) the district court abused its discretion by  
11 refusing to reconsider the imposition of a three-year incarceration term [BIC 10-11].  
12 As we explain below, we conclude that our jurisdiction extends only to Defendant’s  
13 first issue, and we reject that contention.

14 {3} First, we address the proper scope of this appeal. The district court entered its  
15 order revoking Defendant’s probation and reincarcerating Defendant on December  
16 2, 2024. [2 RP 319-23] Defendant, while represented by counsel, did not file a timely  
17 notice of appeal from this order, a waiver of the right to appeal, or a timely motion  
18 to reconsider that would have suspended the finality of the probation revocation  
19 order. New Mexico recognizes a defendant’s right to appeal the revocation of  
20 probation and the right to counsel in probation revocation proceedings, and we will

1 not deny these rights where a defendant’s counsel failed to timely appeal an order  
2 revoking probation. *State v. Leon*, 2013-NMCA-011, ¶ 20, 292 P.3d 493. Thus,  
3 despite the absence of a timely notice of appeal, we accept Defendant’s appeal from  
4 the probation revocation order as timely.

5 {4} However, as we discuss below, we do not address Defendant’s appeal to the  
6 extent it challenges the district court’s oral denial of his motion to reduce sentence.  
7 In district court, Defendant filed a Rule 5-801 NMRA (2017) motion to reduce his  
8 sentence, pro se, which was received by the district court on February 10, 2025. [2  
9 RP 324-33] Defendant dated the motion as January 29, 2025. [2 RP 333] Regardless  
10 of whether it is considered to be filed on January 29 or February 10, 2025, the motion  
11 was filed within ninety days of the district court’s December 2, 2024, probation  
12 revocation order. *See* Rule 5-801(A) (2017) (“A motion to reduce sentence may be  
13 filed within ninety (90) days after the sentence is imposed.”). However, because the  
14 motion was not filed within thirty days of the district court’s December 2, 2024 order  
15 revoking probation, the motion did not suspend the finality of the probation  
16 revocation order. *See State v. Romero*, 2014-NMCA-063, ¶¶ 8, 11, 327 P.3d 525  
17 (holding that although a motion to reduce a sentence may be filed within ninety days  
18 of the final judgment, only a motion to reduce a sentence filed within thirty days of  
19 the final judgment will suspend the finality of that judgment until a written ruling on  
20 the motion has been entered). As a result, a ruling from the district court on

1 Defendant’s motion to reduce sentence is a final, separately appealable order. *See*  
2 *id.* ¶¶ 5, 11 (indicating that a motion to reduce sentence filed thirty days after, but  
3 within ninety days of, the judgment may result in an order that is separately  
4 appealable, akin to a ruling on a Rule 1-060(B) NMRA motion); *see also State v.*  
5 *Neely*, 1994-NMSC-057, ¶¶ 2-3, 5, 117 N.M. 707, 876 P.2d 222 (explaining that  
6 where a defendant asks for reconsideration of a sentence on discretionary grounds,  
7 it constitutes a motion to reduce sentence under Rule 5-801, and the district court’s  
8 denial of that motion is a final, appealable order).

9 {5} In the present case, the district court orally denied Defendant’s motion to  
10 reduce sentence at the hearing on that motion, but has not yet entered a written order  
11 addressing the motion. “It is well established that an oral ruling by the trial court is  
12 not a final judgment, and that the trial court can change such ruling at any time before  
13 the entry of written judgment.” *State v. Diaz*, 1983-NMSC-090, ¶ 4, 100 N.M. 524,  
14 673 P.2d 501; *see State v. Rushing*, 1985-NMCA-091, ¶ 6, 103 N.M. 333, 706 P.2d  
15 875 (“An oral pronouncement is not a final judgment and is subject to change until  
16 reduced to writing.”). Because no written order has been entered on Defendant’s  
17 motion for reduction of sentence, the arguments in Defendant’s motion that fall  
18 within the scope of Rule 5-801 (2017) are premature and not properly raised in this  
19 appeal. *See State v. Durant*, 2000-NMCA-066, ¶ 5, 129 N.M. 345, 7 P.3d 495 (“It  
20 has long been the rule that, absent an express statute or rule, an appeal will not lie

1 from anything other than a formal written order or judgment, signed by the judge  
2 and filed in the record in the case.”).

3 {6} Rule 5-801 (2017) comm. cmt. “authorizes motions seeking *discretionary*  
4 reduction of a sentence.” (Emphasis added.) Challenges to the legal validity of a  
5 sentence may be raised for the first time in a direct appeal or at any time in district  
6 court after all appeals under Rule 5-802 NMRA. *See* Rule 5-801 (2017) comm. cmt.;  
7 Rule 5-802(A) NMRA comm. cmt.; *see also State v. Lucero*, 2007-NMSC-041, ¶ 9,  
8 142 N.M. 102, 163 P.3d 489 (stating that an illegal sentence is a jurisdictional  
9 question, which can be raised for the first time on appeal). Applying these principles  
10 to Defendant’s appeal, we do not address Defendant’s challenges to the district  
11 court’s discretion in sentencing, including his alternative argument that the district  
12 court abused its discretion by imposing a three-year period of imprisonment on top  
13 of the five months he had spent incarcerated after his arrest for a probation violation.  
14 We address only Defendant’s argument that the district court’s sentence was  
15 unlawful in his direct appeal from the order revoking probation.

16 {7} Defendant contends that the district court was required to give Defendant  
17 presentence confinement credit either instead of or in addition to credit toward his  
18 probationary period, for the five-month time period he spent incarcerated after his  
19 arrest for the probation violation to the time he was sentenced for that probation  
20 violation. [BIC 5-10]

1 {8} In New Mexico, “[a] trial court’s power to sentence is derived exclusively  
2 from statute.” *State v. Martinez*, 1998-NMSC-023, ¶ 12, 126 N.M. 39, 966 P.2d 747.  
3 Defendant does not identify any statute that requires a trial court to award a  
4 probationer with presentence confinement credit for the time spent in custody after  
5 an arrest on a probation violation and before the final probation violation order is  
6 entered. The statute governing presentence confinement credit requires the trial court  
7 to give a person in official custody credit for the time spent in presentence  
8 confinement “on suspicion or charges of the commission of a felony.” NMSA 1978,  
9 § 31-20-12 (1967). Here, Defendant was being held on suspicion of violating his  
10 probation, not on suspicion or charges of a felony. Further, “[a] probation violation  
11 is not a crime for which a sentence is imposed.” *State v. Ordunez*, 2012-NMSC-024,  
12 ¶ 16, 283 P.3d 282 (internal quotation marks and citation omitted). The “revocation  
13 of probation does not impose punishment for a new offense; it is the triggering  
14 mechanism for execution of a sentence for the original underlying criminal offense.”  
15 *Id.*

16 {9} Additionally, in the present case, the district court gave Defendant credit  
17 toward his probationary term for the time he was reincarcerated in New Mexico on  
18 suspicion of violating probation and before he was resentenced for the probation  
19 violation. This is consistent with the probation statute’s requirement that the trial  
20 court give a defendant credit for “time served on probation” while the defendant is

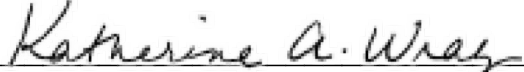
1 on probation and is not a fugitive. *See* NMSA 1978, § 31-21-15(B), (C) (1989,  
2 amended 2016); *State v. Jimenez*, 2004-NMSC-012, ¶ 8, 135 N.M. 442, 90 P.3d 461  
3 (“Section[] 31-21-15(B) and (C), when read together, indicate that all time served  
4 on probation shall be credited [toward probation] unless the defendant is a fugitive.”  
5 (alteration, internal quotation marks, and citation omitted)). Defendant’s contention  
6 that presentence confinement credit is required in this situation is inconsistent with  
7 the statutes as we have explained, the choices the Legislature empowered a  
8 sentencing court to make, and the wide discretion afforded to the courts dealing with  
9 probation violations. *See State v. Aslin*, 2020-NMSC-004, ¶ 12, 457 P.3d 249  
10 (explaining that the district court’s wide discretion in dealing with probation  
11 violation includes the power conferred by Section 31-21-15(B) to continue probation  
12 or revoke probation and impose the balance or less than the balance of the previously  
13 suspended sentence, in an effort to “ensure that the goal of rehabilitation is indeed  
14 being achieved” (internal quotation marks and citation omitted)); *cf. State v. Nieto*,  
15 2013-NMCA-065, ¶¶ 7-8, 303 P.3d 855 (refusing to read the sentencing statutes to  
16 require that district court to apply a defendant’s presentence confinement to the  
17 probationary period in the original judgment and sentence because that would  
18 restrict the district court’s wide discretion to sentence a suitable defendant to a period  
19 of probation that may exceed the term of incarceration).

1 {10} As we explained above, any argument challenging the district court’s  
2 discretionary authority to impose a sentence of incarceration upon the revocation of  
3 Defendant’s probation that was raised in the Rule 5-801(A) (2017) motion is not  
4 properly raised in this appeal and will not be addressed. *See Neely*, 1994-NMSC-  
5 057, ¶¶ 2-3, 5.

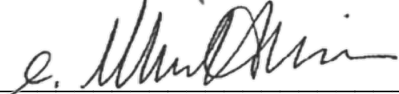
6 {11} Lastly, to the extent Defendant contends that as a general proposition, a  
7 defendant cannot serve probation time while incarcerated, he does not provide  
8 supporting authority, and we are unpersuaded. *See, e.g., State v. Ortiz*, 2015-NMCA-  
9 020, ¶¶ 1, 10, 344 P.3d 1032 (recognizing that a defendant may be credited with time  
10 served on probation while incarcerated, as was the defendant in *Ortiz*); *State v.*  
11 *Hinojos*, 2014-NMCA-067, ¶ 14, 327 P.3d 1120 (recognizing that although  
12 probation is intended to substitute for incarceration, the “[d]efendant in this case was  
13 not permitted to serve any portion of his probation outside prison walls”).

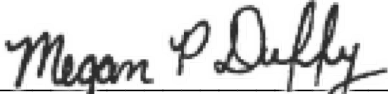
14 {12} For the reasons discussed above, we are not persuaded that the punishment  
15 imposed for Defendant’s probation violation constitutes an illegal sentence. On these  
16 narrow grounds, we affirm the district court order revoking probation.

1 {13} IT IS SO ORDERED.

2   
3 KATHERINE A. WRAY, Judge

4 WE CONCUR:

5   
6 J. MILES HANISEE, Judge

7   
8 MEGAN P. DUFFY, Judge