

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Opinion Number: _____

Court of Appeals of New Mexico
Filed 9/10/2026 9:51 AM

Filing Date: September 10, 2026



Mark Reynolds

No. A-1-CA-42236

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v.

PATRICK HOWARD,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF DOÑA ANA COUNTY

Douglas R. Driggers, District Court Judge

Raúl Torrez, Attorney General

Santa Fe, NM

Eric Orona, Assistant Solicitor General

Albuquerque, NM

for Appellant

Jim Darnell, P.C.

Jeep Darnell

El Paso, TX

for Appellee

1 **OPINION**

2 **HENDERSON, Judge.**

3 {1} The State of New Mexico appeals the district court's order denying the State's
4 motion to reinstate probation for Defendant Patrick Howard, arguing that (1) the
5 district court erred in concluding that Defendant was not subject to the sex-offender-
6 specific probation statute; and as a result, (2) Defendant's early release from
7 probation constitutes an illegal sentence. The State's arguments on appeal center on
8 a single issue of statutory interpretation, whether the sex-offender-specific probation
9 requirements of NMSA 1978, Section 31-20-5.2(A) (2003) apply to defendants
10 receiving a conditional discharge, pursuant to NMSA 1978, Section 31-20-13
11 (1994). Concluding that the Legislature intended Section 31-20-5.2 to apply to sex
12 offenders receiving a conditional discharge, we reverse and remand to the district
13 court for further proceedings consistent with this opinion.

14 **BACKGROUND**

15 {2} Defendant, a high school agricultural teacher, inappropriately touched two
16 students. Defendant was indicted by the Third Judicial District Attorney's Office on
17 four counts of criminal sexual contact of a minor (CSCM) in the third degree (person
18 in a position of authority), contrary to NMSA 1978, Section 30-9-13(C)(2)(a)
19 (2003), against one of the two students; and a single count of battery, a petty
20 misdemeanor, contrary to NMSA 1978, Section 30-3-4 (1963), against the other

1 student. In May 2021, the State and Defendant entered into a written plea and
2 disposition agreement. Pursuant to the agreement, Defendant pleaded guilty to one
3 count of CSCM (person in a position of authority) and the battery charge in exchange
4 for the State recommending a conditional discharge and “[s]upervised [p]robation
5 for five (5) years with sex offender treatment.” The plea agreement also noted that
6 the statutory maximum penalty the district court could impose is “a term of six (6)
7 years imprisonment . . . followed by an indeterminate period of parole for a period
8 of not less than five (5) years and up to the natural life of . . . Defendant,” and that
9 “[i]f the [c]ourt suspends any portion of the sentence, . . . Defendant shall serve an
10 indeterminate period of supervised probation of not less than five (5) years and up
11 to twenty (20) years” for CSCM (person in a position of authority) in the third
12 degree. The district court accepted the plea agreement and the State’s sentencing
13 recommendation, and filed a conditional discharge order placing Defendant on
14 probation for five years minus three days credit for time already served.

15 {3} Less than three years later, Defendant filed a motion to terminate probation.
16 On March 21, 2024, the district court held a two-minute hearing on the motion, a
17 mere six days after it was filed—and only two days after the district court provided
18 notice of the hearing. At the hearing on Defendant’s motion, the State deferred to
19 adult probation and parole’s recommendation, and the probation officer left it to the
20 district court’s discretion whether to grant the motion:

1 Probation Officer: Morning, Your Honor. [inaudible name], probation
2 and parole. Mr. Howard has been very compliant
3 with his conditions of probation. He's completed his
4 community service to include treatment, and he has
5 not incurred any violations during his term on
6 probation. At this time, I would give the court
7 discretion for the motion.

8 District Court: All right. And since he's already served more than
9 50 percent of his time on probation, he's eligible for
10 early release?

11 Probation Officer: Yes, Sir.

12 District Court: Says the State?

13 Prosecutor: The State would defer to probation.

14 District Court: [Defense counsel], your job is made a lot easier. Do
15 you want to take up the court's time or do you wish
16 to pass on any response?

17 Defense Counsel: I think I'll pass.

18 District Court: I think that's wise. Motion granted.

19 {4} The State never objected to nor raised any concern about Defendant's
20 discharge from probation. That same day, the district court entered a discharge from
21 probation order, finding "that the Corrections Department approves said [m]otion
22 and that Defendant has paid all fines and assessments ordered herein. The [c]ourt
23 further finds that . . . Defendant has satisfactorily fulfilled the conditions of his
24 probation." Four days later the district court fixed a technical error in an amended
25 order. The State approved and signed off on the order and the amended order.

1 {5} On May 10, 2024, forty-six days after the district court entered the amended
2 discharge order, the State filed a motion to reinstate Defendant’s probation—raising
3 the same statutory argument raised now on appeal—that the sex-offender-specific
4 probation statute, § 31-20-5.2(A), contains a mandatory probation term requiring
5 “the sex offender to serve an indeterminate period of supervised probation for a
6 period of *not less than five years* and not in excess of twenty years.” (Emphasis
7 added.)¹ The same day, the New Mexico Department of Justice, on behalf of the
8 State, also filed a petition for writ of prohibition or superintending control and
9 request for stay pursuant to Rule 12-504(D)(2)(a) NMRA with our Supreme Court.
10 Our Supreme Court initially granted the stay before denying the State’s petition in

¹The State also raised concern that “Defendant’s probation termination motion hearing was set on such short notice that the setting resulted in violation of the victim[s’] constitutional rights.” Specifically, the State claimed that the two-day turnaround between the district court issuing notice of and holding the hearing violated the victims’ right to be heard under the New Mexico Constitution and provisions of the Victims of Crime Act. See N.M. Const., art. II § 24(A)(5), (7) (stating a victim has “the right to attend all public court proceedings” and “to make a statement to the court at sentencing and at any post-sentencing hearings”); NMSA 1978, § 31-26-10 (1994) (providing that the district court must provide notice to the district attorney’s office “no later than seven working days prior to a scheduled court proceeding . . . , unless a shorter notice period is reasonable under the circumstances[,]” and the district attorney’s office must then notify the victim(s) of the proceeding). The district court provided no explanation as to the short hearing setting, nor does the record reflect that the district court inquired whether the victims were notified of the hearing so that they could exercise their rights. The State also raised this concern in its petition to our Supreme Court, yet for unknown reasons the State seemingly failed to raise this issue in its briefing to this Court, before expressly abandoning this issue during oral argument. Accordingly, we do not address this issue.

1 July 2024, lifting the stay, and ordering the district court to consider the State’s
2 motion to reinstate probation. On September 5, 2024, the district court held a hearing
3 on the State’s motion, before entering a written order denying the motion. The
4 district court concluded that the sex-offender-specific probation statute was
5 inapplicable to Defendant because “the [c]ourt did not defer imposition of . . .
6 Defendant’s sentence and did not suspend all or any portion of . . . Defendant’s
7 sentence.” Rather, the district court reasoned, Defendant received a conditional
8 discharge, “which is a sentencing option distinct from deferred and suspended
9 sentences.” The State appeals.

10 **DISCUSSION**

11 {6} The State raises a single issue of statutory interpretation on appeal: whether
12 the sex-offender-specific probation statute, § 31-20-5.2(A), applies to offenders
13 receiving a conditional discharge pursuant to Section 31-20-13, such that the district
14 court erred in concluding that Defendant was not subject to the sex-offender-specific
15 probation statute; and consequently, Defendant’s early release from probation
16 constitutes an illegal sentence because Defendant was required to serve an
17 “indeterminate period of supervised probation for a period of not less than five
18 years” under Section 31-20-5.2(A). Defendant contends that the district court did not
19 err because Section 31-20-5.2 does not apply to offenders receiving a conditional
20 discharge; thus, it was within the district court’s discretion to terminate Defendant’s

1 probation early. Defendant also contends that the State waived this issue by never
2 objecting to and later approving of his early release. At oral argument before this
3 Court, Defendant argued that even if Section 31-20-5.2 applies to offenders
4 receiving a conditional discharge, the State's request to reinstate Defendant's
5 sentence would violate his constitutional rights to due process and to be free from
6 double jeopardy.

7 {7} We first address threshold questions regarding the State's right to appeal, this
8 Court's jurisdiction, and waiver before explaining the proper standard of review and
9 turning to the substantive claims on appeal.

10 **I. The State's Right to Appeal and Waiver**

11 {8} Our rules of appellate procedure require that an appeal as of right must be
12 taken by filing a notice "within thirty (30) days after the judgment or order appealed
13 from is filed." Rule 12-201(A)(1)(b) NMRA. Here, the district court entered its
14 amended discharge order on March 25, 2024. As we have explained, the State moved
15 to reinstate probation more than thirty days later, but following a writ our Supreme
16 Court ordered the district court to consider the State's motion, which was ultimately
17 denied by the district court following a hearing on September 5, 2024. The State
18 timely appeals from the district court's order denying the State's motion to reinstate
19 probation. *See* Rule 12-201(A)(1)(b); N.M. Const. art. VI, § 2 (providing that "an
20 aggrieved party shall have an absolute right to one appeal"). Therefore, because our

1 Supreme Court ordered the district court to consider the State’s motion to reinstate
2 probation and the State now timely appeals from the district court’s denial of their
3 motion, we have jurisdiction over this appeal.

4 {9} Defendant argues that the State has no constitutional right to an appeal in the
5 present case because the district court’s decision was not contrary to law and further
6 that the State waived the issue at the hearing on the March 2024 motion to terminate
7 probation. However, the violation of a mandatory statute may be a “disposition
8 contrary to law” that provides the state with a constitutional right to appeal. *See State*
9 *v. Horton*, 2008-NMCA-061, ¶ 9, 144 N.M. 71, 183 P.3d 956. Additionally, this
10 Court has previously determined that a challenge to the legality of a sentence is a
11 jurisdictional question as to the district court’s authority to impose an illegal
12 sentence and need not be preserved. *See State v. Shay*, 2004-NMCA-077, ¶ 6, 136
13 N.M. 8, 94 P.3d 8 (noting that the state may challenge illegal sentences for the first
14 time on appeal because “the district court does not have jurisdiction to impose an
15 illegal sentence and the appellate rules allow jurisdictional issues to be raised for the
16 first time on appeal”); *see also State v. Martinez*, 1998-NMSC-023, ¶ 12, 126 N.M.
17 39, 966 P.2d 747 (“A [district] court’s power to sentence is derived exclusively from
18 statute.”). Accordingly, we now consider the substantive issue before us on appeal—
19 i.e., whether Defendant’s sentence was contrary to law, constituting an illegal
20 sentence. *See State v. Miller*, 2013-NMSC-048, ¶¶ 35-36, 314 P.3d 655 (affirming

1 the district court’s responsibility to ensure that the terms of an accepted plea
2 agreement conform to our sentencing statutes and do not constitute an illegal
3 sentence).

4 **II. Standard of Review**

5 {10} The State argues for de novo review, given the issues of statutory
6 interpretation and challenge to the legality of Defendant’s sentence. Defendant
7 contends that while we should review the State’s right to appeal under a de novo
8 standard, we should apply an abuse of discretion review to the State’s substantive
9 claims because “the real issue . . . is whether the [d]istrict [c]ourt had the authority
10 to release [Defendant] from his probation early.”

11 {11} Generally, we review probationary sentencing for an abuse of discretion. *See*
12 *State v. Green*, 2015-NMCA-007, ¶ 9, 341 P.3d 10. Here, however, the issue before
13 us is whether the district court imposed an illegal sentence—an issue of statutory
14 interpretation requiring determination of whether the sex-offender-specific
15 probation statute applies to offenders, like Defendant, who receive a conditional
16 discharge. Accordingly, our review is appropriately de novo. *See State v. Fairbanks*,
17 2004-NMCA-005, ¶ 5, 134 N.M. 783, 82 P.3d 954 (“Statutory interpretation is a
18 question of law that we review de novo.”); *see also Green*, 2015-NMCA-007, ¶ 9
19 (asserting that a district court does not have discretion to impose probation terms
20 contrary to law, so the legality of a sentence is reviewed de novo).

{12} We now turn to the State’s contention on appeal, first addressing whether the sex-offender-specific probation provisions of Section 31-20-5.2 apply to offenders receiving conditional discharges.

III. Section 31-20-5.2 and Conditional Discharge

{13} The State contends that the sex-offender-specific probation statute, § 31-20-5.2, applies to offenders like Defendant, who receive a conditional discharge pursuant to Section 31-20-13. Whether the sex-offender-specific probation statute applies to Defendant is a question of statutory interpretation. “The main purpose of statutory interpretation is to give effect to the intent of the Legislature” by looking “to the plain language of the statute unless the meaning of the language is ambiguous.” *State v. Sena*, 2023-NMSC-007, ¶ 15, 528 P.3d 631. However, “if the result of adopting a strict construction of the statutory language would be absurd or unreasonable, then we interpret the statute according to its obvious spirit or reason.” *State v. Eaker*, ____-NMSC-____, ¶ 11, ____ P.3d ____ (S-1-SC-40604, June 17, 2026) (alteration, internal quotation marks, and citation omitted). “In considering a statute’s meaning by reference to its place within a more comprehensive act, we read different legislative enactments as harmonious instead of as contradicting one another.” *Id.* ¶ 12 (internal quotation marks and citations omitted).

{14} Here, Defendant received a conditional discharge pursuant to Section 31-20-13. Under Section 31-20-13(A):

1 When a person who has not been previously convicted of a felony
2 offense is found guilty of a crime for which a deferred or suspended
3 sentence is authorized, the court may, without entering an adjudication
4 of guilt, enter a conditional discharge order and place the person on
5 probation on terms and conditions authorized by [NMSA 1978,
6 Section 31-20-5 [(2003, amended 2025)] and [NMSA 1978, Section]
7 31-20-6 [(2007)] A conditional discharge order may only be made
8 available once with respect to any person.

9 The conditional discharge statute expressly incorporates Section 31-20-5,² the
10 general probation statute. Under Section 31-20-5(A):

11 When a person has been convicted of a crime for which a sentence of
12 imprisonment is authorized and when the magistrate, metropolitan or
13 district court has deferred or suspended sentence, it shall order the
14 defendant to be placed on probation for all or some portion of the period
15 of deferment or suspension if the defendant is in need of supervision,
16 guidance or direction that is feasible for the corrections department to
17 furnish. Except for sex offenders as provided in Section 31-20-5.2 . . . ,
18 the total period of probation for district court shall not exceed five years
19 and the total period of probation for the magistrate or metropolitan
20 courts shall be no longer than the maximum allowable incarceration
21 time for the offense or as otherwise provided by law.

22 {15} Section 31-20-5(A) explicitly excepts sex offenders under Section 31-20-5.2
23 from the general probation limitation of five years of probation. *See State v. Pelt*,
24 2025-NMSC-042, ¶ 14, 580 P.3d 164 (“The only provisions that differ between
25 the[se] two statutes are those addressing the term of probation imposed. That, alone,

²Although Section 31-20-5 was amended in 2025 to include a new Subsection (C), allowing for minimum risk offenders to be automatically released from probation if certain conditions are met, we rely on the 2017 version of the statute in effect during Defendant’s commission of the crimes, and therefore we do not address whether it applies to sex offenders. All references to Section 31-20-5 refer to the 2017 version of the statute.

1 does not create a conflict between the statutes. . . . Rather than creating a wholly
2 separate scheme, the sex-offender-specific probation statute merely establishes a
3 system of indeterminate probation imposed on sex offenders, where probation for
4 other offenses is limited to five years under the general probation statute.”).

5 {16} Turning to the sex-offender-specific probation statute, Section 31-20-5.2(F)
6 defines a “sex offender” to mean a “person who is convicted of, pleads guilty to or
7 pleads nolo contendere to any one of the following offenses: . . . (3) criminal sexual
8 contact of a minor in the second or third degree, as provided in Section 30-9-13.”
9 Here, Defendant pleaded guilty to third degree CSCM, in violation of Section 30-9-
10 13. Because Defendant pleaded guilty to one of the enumerated offenses listed in
11 Section 31-20-5.2(F), under the plain language of that section Defendant is a sex
12 offender subject to the statute’s provisions. *See Pelt*, 2025-NMSC-042, ¶ 4 (holding
13 that both “the general probation statute and the sex-offender-specific statute apply
14 to sex offenders”). Accordingly, under Section 31-20-5.2(A):

15 When a district court defers imposition of a sentence for a sex offender,
16 or suspends all or any portion of a sentence for a sex offender, the
17 district court shall include a provision in the judgment and sentence that
18 specifically requires the sex offender to serve an indeterminate period
19 of supervised probation for a period of not less than five years and not
20 in excess of twenty years. A sex offender’s period of supervised
21 probation may be for a period of less than twenty years if, at a review
22 hearing provided for in Subsection B of this section, the state is unable
23 to prove that the sex offender should remain on probation.

1 As applied in this case, Defendant would be required to serve a *minimum* term of
2 probation of at least five years.

3 {17} However, the district court concluded that Section 31-20-5.2(A) does not
4 apply in this case because the statutory language only includes offenders receiving
5 a deferred or suspended sentence, not a conditional discharge. *See Benns v. N.M.*
6 *Dep't of Pub. Safety*, 2022-NMCA-050, ¶ 9 n.1, 517 P.3d 273 (noting that while
7 deferred and suspended sentences involve an adjudication of guilt, a conditional
8 discharge is different because there is no adjudication of guilt such that “the
9 successful completion of probation under the terms of a conditional discharge results
10 in the eradication of the guilty plea or verdict and there is no conviction” (internal
11 quotation marks and citation omitted)). However, it is clear from the plain language
12 of the probationary provisions that the Legislature intended for the statutes to work
13 harmoniously and to apply to sex offenders receiving a conditional discharge. *See*
14 *Pelt*, 2025-NMSC-042, ¶¶ 9-14 (discussing how the plain language of the general
15 and sex-offender-specific probation statutes work in harmony to create a coherent
16 statutory scheme under which sex offenders are subject to a system of indeterminate
17 probation); *cf. State v. Leslie*, 2004-NMCA-106, ¶¶ 8-10, 136 N.M. 244, 96 P.3d
18 805 (“[NMSA 1978,] Section 31[-]21-15(B) refers only to a deferred sentence and
19 not to a conditional discharge” because “ a person who is eligible to receive a
20 conditional discharge is by definition one who is entitled to a deferred sentence”

1 under Section 31-20-13(A)); *State v. Herbstman*, 1999-NMCA-014, ¶ 11, 126 N.M.
2 683, 974 P.2d 177 (stating that “[t]he [L]egislature enacted the conditional discharge
3 statute as an alternative to a suspended or deferred sentence” for persons with no
4 previous felony convictions). The conditional discharge statute states that when a
5 conditional discharge is entered, the court must “place the person on probation on
6 terms and conditions authorized by Section[] 31-20-5.” Section 31-20-13(A).
7 Section 31-20-5(A) states that “[e]xcept for sex offenders as provided in Section 31-
8 20-5.2 . . . , the total period of probation for district court shall not exceed five years,”
9 thus expressly instructing that sex offenders who receive a conditional discharge are
10 subject to the probationary terms required by Section 31-20-5.2.

11 {18} Finally, both Sections 31-20-5(A) and 31-20-5.2(A) include similar language
12 explicitly referring to deferred or suspended sentences. *Compare* § 31-20-5(A)
13 (“When a person has been convicted of a crime for which a sentence of
14 imprisonment is authorized and *when the magistrate, metropolitan or district court*
15 *has deferred or suspended sentence*, it shall order the defendant to be placed on
16 probation.” (emphasis added)), with § 31-20-5.2(A) (“*When a district court defers*
17 *imposition of a sentence for a sex offender, or suspends all or any portion of a*
18 *sentence for a sex offender*, the district court shall include a provision in the
19 judgment and sentence that specifically requires the sex offender to serve an
20 indeterminate period of supervised probation for a period of not less than five years

1 and not in excess of twenty years.” (emphasis added)). This Court has read the
2 language in Section 31-20-5 and corresponding probation-related statutes to apply
3 to a conditional discharge, as well as a deferred sentence, because the probation
4 statutes are expressly incorporated into the conditional discharge statute. *See Leslie*,
5 2004-NMCA-106, ¶ 9 (determining that the probation violation statute “controls the
6 sentencing of a defendant who received a conditional discharge instead of a deferred
7 [or suspended] sentence”). Given the similarities between Sections 31-20-5(A) and
8 31-20-5.2(A), a sex offender who receives a conditional discharge is similarly
9 subject to the same indefinite probation requirements of Section 31-20-5.2(A) that
10 would apply if a deferred sentence had been imposed. Such a harmonious reading
11 evinces the purpose of probation in rehabilitating and reintegrating sex offenders
12 while also ensuring the safety of the community. *See State v. Cooley*, 2023-NMCA-
13 089, ¶ 50, 538 P.3d 491 (“[T]he state certainly has an interest in rehabilitating
14 convicted sex offenders through probation and keeping the community safe.”);
15 *Aragon v. Martinez*, 2025-NMSC-046, ¶ 40, 580 P.3d 202 (same).

16 {19} Therefore, a sex offender receiving a conditional discharge pursuant to
17 Section 30-20-13 must be placed on probationary terms consistent with Section 31-
18 20-5.2(A), which requires that the offender “serve an indeterminate period of
19 supervised probation for a period of not less than five years and not in excess of
20 twenty years.” *See Cooley*, 2023-NMCA-089, ¶ 20 (discussing that “indeterminate”

1 means “the sentence must be between five and twenty years” and can only be less
2 than twenty years if the “the state fails to meet its burden *at a review hearing*” such
3 that “the probationer cannot be given a definite sentence of eleven years, for
4 example”). This conclusion raises another question—is the illegal sentence in the
5 present case the original five-year fixed probationary period expressed in the district
6 court’s original judgment and sentence, or rather, its subsequent early termination of
7 Defendant’s probation. In its briefing, the State argued the sex-offender-specific
8 probation statute applies to Defendant such that the early termination of Defendant’s
9 probation is an illegal sentence. Subsequently, we held oral argument in part to
10 clarify the State’s position regarding whether the original sentence recommended in
11 the plea agreement and imposed by the district court’s judgment and sentence also
12 constitutes an illegal sentence. At oral argument, the State asserted that although the
13 original sentence “hit the statutory floor,” the recommended sentence should have
14 been for “the five to twenty [year] indeterminate period . . . by the statute.” We agree.
15 Section 31-20-5.2(A) affords the district court no discretion to impose less than five
16 to twenty years of probation or any definite term, *see Cooley*, 2023-NMCA-089,
17 ¶ 20, but instead requires that “the district court shall include a provision in the
18 judgment and sentence that specifically requires the sex offender to serve an
19 indeterminate period of supervised probation for a period of not less than five years
20 and not in excess of twenty years.” Section 31-20-5.2(A); *see Cooley*, 2023-NMCA-

089, ¶ 26 (“This Court generally construes the Legislature’s use of ‘shall’ in a statute as a mandatory obligation in most circumstances.”).

Consequently, the original sentence recommended in Defendant’s plea agreement, “[s]upervised [p]robation for five (5) years,” was contrary to Section 31-20-5.2(A). *See Cooley*, 2023-NMCA-089, ¶ 20 (reiterating the mandatory nature of the indeterminate five-year minimum probationary sentence imposed by Section 31-20-5.2(A)). Therefore, the district court imposed an illegal sentence in accepting Defendant’s original sentence of five years of probation that did not conform with the sex-offender-specific probation statute. *See Miller*, 2013-NMSC-048, ¶ 36 (explaining that sentences not conforming to mandatory statutory requirements are illegal). Additionally, because the sex-offender-specific probation statute mandates an *indefinite period of supervised probation between five and twenty years*, Defendant was not eligible for early termination of his sentence. *See* § 31-20-5.2(B) (“When a sex offender has served the initial five years of supervised probation, the district court shall also review the duration of the sex offender’s supervised probation at two and one-half year intervals.”); *Cooley*, 2023-NMCA-089, ¶ 20 (“[U]ntil such a review hearing is held, so long as the term has not lasted twenty years, the statute allows an individual of ordinary intelligence to determine that the probationer is still on probation.”).

{21} Having determined that the district court imposed an illegal sentence, we now turn to the State’s contention that we should reinstate the remainder of Defendant’s sentence.

IV. Double Jeopardy

{22} This Court held oral argument, in part, to allow the parties to address any double jeopardy or mootness concerns that could result from reinstating Defendant’s probation, as the parties did not brief these issues. The State argued that Defendant’s original sentence to five years of probation should be reinstated in accordance with the sex-offender-specific probation statute. Defendant argued that he had a reasonable expectation in the five-year probationary sentence and that he was eligible for early release. Defendant also argued that reinstating his sentence would violate his right to be free from double jeopardy because he was discharged from probation and has completed his sentence.

{23} Our Supreme Court has determined that the jurisdiction of a court generally expires once a defendant has completed their sentence. *State v. Banghart-Portillo*, 2022-NMSC-021, ¶ 12, 519 P.3d 58. “This jurisdictional limitation is founded upon principles of double jeopardy: once a sentence has been served, a defendant’s punishment for the crime has come to an end.” *Id.* ¶ 12 (internal quotation marks and citation omitted); see N.M. Const., art. II, § 15. However, “[s]uch double jeopardy concerns are only implicated if the defendant has an objectively reasonable

1 expectation of finality in the sentence.” *Banghart-Portillo*, 2022-NMSC-021, ¶ 12
2 (internal quotation marks and citation omitted). Generally, a defendant must prove:
3 “(1) that the defendant had an expectation of finality in the defendant’s original
4 sentence, and (2) that the expectation was reasonable.” *Id.* (alterations, internal
5 quotation marks, and citation omitted).

6 {24} The application of a defendant’s reasonable expectations of finality in a
7 sentence doctrine has been developed largely in cases dealing with sentencing
8 enhancements, namely habitual offender statutes. *See, e.g., March v. State*, 1989-
9 NMSC-065, ¶ 5, 109 N.M. 110, 782 P.2d 82; *State v. Gaddy*, 1990-NMCA-055,
10 ¶¶ 7-8, 110 N.M. 120, 792 P.2d 1163; *Banghart-Portillo*, 2022-NMSC-021, ¶ 12.
11 Our case law has grappled with at what point a defendant has an expectation of
12 finality in their sentence, but generally one exists where the State attempts to impose
13 an enhancement after the Defendant has already served the time for which the
14 enhancement would apply. *See, e.g., State v. Freed*, 1996-NMCA-044, ¶ 8, 121 N.M.
15 569, 915 P.2d 325 (“The prosecutor may seek [a habitual offender] enhancement at
16 any time following conviction, as long as the sentence enhancement is imposed
17 before the defendant finishes serving the term of incarceration and any parole or
18 probation that may follow that term.”). If a defendant’s original or underlying
19 sentence is still being served, the State has discretion whether and when to seek an
20 enhancement; and only if sought by the State, then must the district court impose

1 sentencing prescribed by the appropriate enhancement statute. *See id.* (“The
2 prosecutor *may* seek enhancement.” (emphasis added)).

3 {25} Here, however, we are dealing with part of a *basic mandatory sentence*
4 requiring an indeterminate period of five to twenty years of probation under the sex-
5 offender-specific probation statute. *See* § 31-20-5.2(A); *Cooley*, 2023-NMCA-089,
6 ¶ 20; *see also State v. Roybal*, 1995-NMCA-097, ¶ 8, 120 N.M. 507, 903 P.2d 249
7 (describing the double jeopardy prohibition as “[f]urther punishment for [a] crime
8 under any enhancement provision”). Neither the State nor the district court is
9 afforded discretion whether or when to seek imposition of the sentence or to alter
10 the legislatively-mandated sentence; nor are we enhancing a basic sentence with
11 additional time. Rather, under the sex-offender-specific probation statute, a
12 defendant pleading guilty to third degree CSCM is required to serve the statutorily-
13 defined probationary period. In the present case, the plea agreement—despite the
14 deficiencies already identified—set forth the mandatory basic sentence and also
15 agreed to a five-year period of probation. Nothing in the agreement suggested that
16 Defendant would serve less than five years of probation. Therefore, considering the
17 mandatory nature of the basic sentence, the terms of the plea agreement, and the
18 circumstances of this case, the only objectively reasonable expectation Defendant
19 could have had was at least the minimum period of probation mandated by Section
20 31-20-5.2(A).

1 {26} Defendant contends that this is a matter of first impression—the first time that
2 our Court has addressed whether the sex-offender-specific probation statute applies
3 to a defendant receiving a conditional discharge—and should not, therefore, apply
4 “retroactively” to Defendant. Defendant relies on our long-established case law that
5 a conditional discharge is different than a suspended or deferred sentence in that
6 “there is no adjudication of guilt.” *Fairbanks*, 2004-NMCA-005, ¶ 10. However,
7 whether Defendant was adjudicated guilty is not at issue here. Rather, our case law
8 has been unequivocally clear that defendants are classified as sex offenders under
9 Section 31-20-5.2(F) when they *plead* guilty to the charge at issue in this case, and
10 regardless of whether the defendant receives a conditional discharge, the defendant
11 is subject to the same probation rules as defendants who receive deferred sentences
12 because the conditional discharge statute expressly incorporates the probation
13 statutes. *See Leslie*, 2004-NMCA-106, ¶ 9.

14 {27} In fact, as Defendant noted at oral argument, the plea agreement references
15 the mandatory sentencing statute as “boilerplate language.” The plea agreement
16 states that as part of the maximum sentence faced by Defendant, “[i]f the [c]ourt
17 suspends any portion of the sentence, . . . Defendant shall serve an indeterminate
18 period of supervised probation of not less than five (5) years and up to twenty (20)
19 years” for CSCM in the third degree. *See* § 31-20-5.2(A). The parties were clearly
20 aware of the mandatory sex-offender-specific probationary statute. Accordingly,

1 Defendant could not have had a reasonable expectation in the wrong basic sentence
2 when the correct sentence is mandatory, *see Cooley*, 2023-NMCA-089, ¶ 20; *Pelt*,
3 2025-NMSC-042, ¶ 14, and the probation statutes are known to apply to defendants
4 receiving a conditional discharge. *See Leslie*, 2004-NMCA-106, ¶ 9.

5 {28} Yet, after less than three years the district court granted Defendant’s motion
6 to terminate probation and discharged Defendant from the remainder of his
7 probation. At the hearing on Defendant’s motion, the probation officer testified that
8 Defendant was eligible for early release from probation—and the State did not object
9 but rather deferred to the probation officer.³ However, nowhere in the plea
10 agreement or the conditional discharge order was there any mention of eligibility for
11 or the possibility of early release. *See Banghart-Portillo*, 2022-NMSC-021, ¶ 14
12 (“When interpreting a plea agreement, appellate courts construe the agreement’s

³We note that despite the probation officer’s acquiescence to Defendant’s early release at the hearing on Defendant’s motion, the New Mexico Corrections Department’s own policies and procedures note the conditions under which early discharge from probation may be sought and that “[s]ex offenses are not eligible for early discharge consideration.” N.M. Corr. Dep’t, Policy CD-051500(A)(6), *PPD Review of Offender Progress for Early Discharge Consideration* (Mar. 9, 2026); *see* § 31-20-5.2(B) (stating that only “[w]hen a sex offender has served the initial five years of supervised probation” shall the district court hold duration reviews at two one-half year intervals to determine whether the defendant should stay on probation). The list of enumerated offenses in the agency’s definition of “sex offense” includes CSCM in the third degree, *see* N.M. Corr. Dep’t, Policy CD-051500(J)(17), the crime for which Defendant was convicted.

1 terms according to what the defendant reasonably understood when the defendant
2 entered the plea.” (alterations, internal quotation marks, and citation omitted)).

3 {29} Based on the mandatory basic sentencing provisions and the language of the
4 plea agreement we conclude that Defendant was fully apprised of the mandatory
5 minimum probationary sentence he should have expected to face, and that he was
6 not eligible for early release from probation. Accordingly, Defendant has not fully
7 served his sentence. *Cf. Roybal*, 1995-NMCA-097, ¶ 7 (stating that “an irregular
8 sentence cannot be set aside and increased once the defendant has fully served the
9 sentence, because that would be tantamount to punishing the defendant twice, in
10 contravention of the double jeopardy provisions of Article II, Sections 15 and 18 of
11 the New Mexico Constitution”).

12 {30} Thus, we conclude that Defendant could not have had an objectively
13 reasonable expectation in the illegal sentence imposed nor the district court’s early
14 termination of his probation. A defendant’s expectation in serving a sentence
15 contrary to law—when the basic sentence is both mandatory and known to the
16 defendant—is unreasonable.⁴ *Cf. State v. Villalobos*, 1998-NMSC-036, ¶ 5, 126
17 N.M. 255, 968 P.2d 766 (stating that “there may be no multiple punishments for the

⁴Although a district court’s ability to correct an illegal sentence is limited to “within thirty (30) days after a sentence is imposed” by Rule 5-801(A) NMRA, the Rule does not apply to a mandatory sentence. *See* Rule 5-801(E). Because neither party raises an argument pursuant to Rule 5-801, we do not further address the applicability of Rule 5-801 to the facts of the case before us.

1 same offense. A punishment is ‘multiple’ if there has developed a reasonable
2 expectation of finality in the possible severity of the sentence” (citation omitted)).
3 The only reasonable sentence Defendant could have expected was to serve at least
4 five years of probation, and because he did not serve five years, he had not served
5 his sentence for the purposes of double jeopardy and correcting an illegal sentence
6 to the legislatively-mandated indeterminate period of between five and twenty years
7 of probation, pursuant to Section 31-20-5.2(A).

8 {31} We next examine the appropriate remedy given the unique circumstances of
9 this case.

10 **V. Due Process**

11 {32} Under our holding, we reverse the district court’s imposition of the clearly
12 illegal sentence recommended in the plea agreement, as the district court was
13 required to sentence Defendant in accordance with the sex-offender probationary
14 statute, § 31-20-5.2(A). As a result, we remand for the district court to impose the
15 mandatory sentence and to provide Defendant an opportunity to withdraw his plea
16 since, as we explain, due process considerations demand as much.

17 {33} In *Miller*, our Supreme Court explained in the plea context that a “court must
18 . . . be mindful of our sentencing statutes and cannot impose an illegal sentence. . . .
19 If the sentence in an accepted plea agreement is illegal, [it] cannot be imposed by a
20 court.” 2013-NMSC-048, ¶ 36 (citations omitted); see *State v. Mares*, 1994-NMSC-

1 123, ¶ 10, 119 N.M. 48, 888 P.2d 930 (“[Our Supreme] Court has long held that the
2 [district] court may impose only sentences which are authorized by law.”).
3 Accordingly, “[a]n illegal sentence is void and a nullity.” *State v. Romero*, 2023-
4 NMSC-008, ¶ 32, 528 P.3d 640. Imposition of the statutorily required probation
5 period constitutes replacing the nullity of the illegal probation sentence, not
6 increasing the severity of an otherwise valid sentence. *See Roybal*, 1995-NMCA-
7 097, ¶ 7; *Villalobos*, 1998-NMSC-036, ¶ 5.

8 {34} In remanding, we follow New Mexico Supreme Court precedent for analyzing
9 whether a change to the probation sentence entitles Defendant to an opportunity to
10 withdraw his plea under his constitutional right to due process. *See Romero*, 2023-
11 NMSC-008, ¶ 36. At oral argument, Defendant argued that “retroactively” applying
12 the sex-offender-specific probation statute would violate his due process rights.

13 {35} As articulated in *Romero*, Defendant’s due process contention falls under
14 two separate, though closely related, constitutional challenges that may
15 be made when seeking relief from a guilty plea: (1) that the plea of
16 guilty was not made voluntarily and with full knowledge of the
17 consequences, and (2) that the defendant did not receive the benefit of
18 the bargain the defendant made with the state when the defendant
19 [pleaded] guilty.

20 *See* 2023-NMSC-008, ¶ 39 (alterations, internal quotation marks, and citation
21 omitted). In *Romero*, our Supreme Court noted a couple of principles relevant to the
22 circumstances of the case before us. *See id.* ¶ 45. Chief among these principles is
23 that “the parties’ broad latitude to negotiate the terms of a plea agreement cannot

1 result in a term that is contrary to law,” such that negotiation of an illegal sentence
2 does not render that sentence lawful or enforceable. *Id.* Next, Rule 5-303(F)-(G)
3 NMRA requires that a plea be entered into knowingly and voluntarily. This “cannot
4 be circumvented or waived for a plea of guilty.” *Romero*, 2023-NMSC-008, ¶ 45.
5 Finally, where the rule’s advisement requirements are not satisfied, a lack of due
6 process ““presumptively affects the defendant’s substantial rights and renders the
7 plea unknowing and involuntary.”” *Romero*, 2023-NMSC-008, ¶ 45 (alteration
8 omitted) (quoting *State v. Garcia*, 1996-NMSC-013, ¶¶ 22-23, 121 N.M. 544, 915
9 P.2d 300); *see Garcia*, 1996-NMSC-013, ¶ 22 (“[T]he defendant must understand
10 the consequences of [their] plea at the time the plea is taken.” (emphasis omitted)).

11 {36} The record in this case is clear that while the mandatory sentence was noted
12 as a maximum possible sentencing term in the plea agreement and the district court’s
13 approval of the agreement, the agreement and approval included a caveat that the
14 sentence could only be imposed if the district court suspended any portion of
15 Defendant’s sentence. Thus, the plea agreement stated that Defendant agreed to a
16 sentence of “[s]upervised [p]robation for five (5) years with sex offender treatment,”
17 which the district court accepted. Because the early release was not a term of the
18 plea agreement, reinstatement of Defendant’s probationary sentence does not
19 deprive Defendant of the benefit of his bargain, as he did not bargain for early
20 release.

1 {37} However, Defendant did bargain for a term of probation of five years on
2 probation, which, as we have explained, constitutes an illegal sentence. While we
3 agree with the parties that the five-year probationary term is the statutory minimum
4 Defendant could face—as noted above, Defendant must serve “an indeterminate
5 period of supervised probation for a period of not less than five years and not in
6 excess of twenty years.” See § 31-20-5.2(A). This is substantively different than a
7 definite probationary sentence of only five years because under the sex-offender-
8 specific probationary statute, only after a defendant has first served an initial five-
9 year probationary term are they eligible for duration review hearings at which the
10 state bears the burden “of proving to a reasonable certainty that the sex offender
11 should remain on probation.” Section 31-20-5.2(B). If the state meets its burden at
12 the periodic duration review hearings, a defendant could remain on supervised
13 probation for up to twenty years. See § 31-20-5.2(A); *Cooley*, 2023-NMCA-089,
14 ¶ 20.

15 {38} In *Romero* our Supreme Court concluded the defendant was prejudiced when
16 the district court accepted a plea agreement with an illegal two-year parole term and
17 the district court later imposed a harsher sentence to reflect the mandatory parole
18 term. 2023-NMSC-008, ¶¶ 50, 52. Our Supreme Court held that the district court
19 erred in not providing the defendant the opportunity to withdraw his plea and
20 remanded the case to the district court with instructions to allow the defendant an

1 opportunity to do so. *See id.* ¶¶ 50, 52, 54. *Romero* supports the same remedy in this
2 case. Because the illegal sentence was a term of the plea agreement, which was
3 reinforced at the plea hearing, correction of that sentence constitutes a change to the
4 plea agreement. It follows that imposition of the requisite indeterminate
5 probationary sentence would constitute a broken promise under the plea agreement.
6 Accordingly, we remand to the district court with instructions to impose the legally
7 mandatory probationary sentence under Section 31-20-5.2(A) and to allow
8 Defendant an opportunity to withdraw his plea.

9 **CONCLUSION**

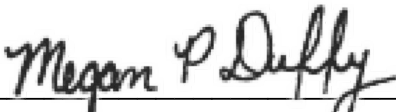
10 {39} We conclude that the sex-offender-specific probation statute, Section 31-20-
11 5.2(A), applies to sex offenders receiving a conditional discharge. Because the
12 district court imposed an illegal sentence on Defendant, we reverse and remand for
13 proceedings consistent with this opinion.

14 {40} **IT IS SO ORDERED.**

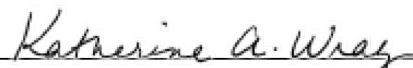


15
16 **SHAMMARA H. HENDERSON, Judge**

17 **WE CONCUR:**



18
19 **MEGAN P. DUFFY, Judge**



20
21 **KATHERINE A. WRAY, Judge**