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

2 **STATE OF NEW MEXICO,**

3 **Plaintiff-Appellee,**

4 **vs.**

No. 34,817

5 **FIDEL ARAGON,**

6 **Defendant-Appellant.**

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

8 **Michael E. Martinez, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Jorge A. Alvarado, Chief Public Defender

13 Kathleen T. Baldrige, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **HANISEE, Judge.**

18 {1} Defendant appeals from a district court order revoking his probation. We issued

19 a calendar notice proposing to affirm. Defendant has responded with a timely

1 memorandum in opposition. We affirm.

2 {2} Defendant continues to challenge the sufficiency of the evidence to support the
3 revocation of his probation. [MIO 4] “In a probation revocation proceeding, the [s]tate
4 bears the burden of establishing a probation violation with a reasonable certainty.” *See*
5 *State v. Leon*, 2013-NMCA-011, ¶ 36, 292 P.3d 493. “To establish a violation of a
6 probation agreement, the obligation is on the [s]tate to prove willful conduct on the
7 part of the probationer so as to satisfy the applicable burden of proof.” *In Re Bruno*
8 *R.*, 2003-NMCA-057, ¶ 11, 133 N.M. 566, 66 P.3d 339; *see also State v. Martinez*,
9 1989-NMCA-036, ¶ 8, 108 N.M. 604, 775 P.2d 1321 (explaining that probation
10 should not be revoked where the violation is not willful, in that it resulted from factors
11 beyond a probationer’s control).

12 {3} The district court found that Defendant violated two conditions of probation.
13 [RP 127]. Condition No. 1 required Defendant to comply with all laws, and not to
14 endanger another person. [RP 112] Our calendar notice relied on the record, which
15 indicated that Defendant was involved in an incident of domestic violence. [RP 112]
16 In his memorandum in opposition, Defendant informs us that a woman testified
17 concerning this incident. [MIO 2] She testified that she and Defendant were living
18 together at the time, and that Defendant physically attacked her. [MIO 2-3] There was
19 also testimony that Police responded to the residence, and that Defendant was

1 subsequently charged with battery against a household member. [MIO 3] Based on
2 this evidence, we believe that there was sufficient evidence presented under the
3 aforementioned “reasonably certainty” standard.

4 {4} Condition No. 3 of probation required Defendant to get permission from his
5 probation officer before he changed his residence. The record indicates that Defendant
6 left his residence shortly after the domestic violence incident, before the police
7 arrived, and two days later was found by police at a new apartment. [RP 112]
8 Defendant argues that there was no evidence that he was now living at this apartment.
9 [MIO 5] However, the evidence supports a reasonable inference that Defendant had
10 fled the residence on file with the probation officer. In light of the domestic violence
11 incident and the flight, a factfinder could infer that the residence he had shared with
12 his girlfriend was no longer his residence. In other words, the change of address
13 notification provision encompasses a situation where a probationer is no longer
14 residing at the specified residence, and the State does not have to prove that a
15 different, permanent residence had been substituted.

16 {5} For the reasons set forth above, we affirm.

17 {6} **IT IS SO ORDERED.**

18
19

J. MILES HANISEE, Judge

1 **WE CONCUR:**

2 _____
3 **RODERICK T. KENNEDY Judge**

4 _____
5 **M. MONICA ZAMORA, Judge**