



1 dismiss the petition for probation revocation. [DS 1; RP 186] Defendant asserts she  
2 moved to dismiss the petition for probation revocation on the ground that the  
3 adjudication hearing was not commenced within the time limit prescribed by Rule 5-  
4 805 NMRA. [DS 2] In this Court’s notice of proposed disposition, we proposed to  
5 dismiss for lack of a final order or because Defendant waived her right to appeal. [CN  
6 2] Defendant filed a memorandum in opposition, which we have given due  
7 consideration. Remaining unpersuaded, we dismiss.

8 {2} Defendant asks this Court to construe a plea document and order committing  
9 her to jail as a final order. [MIO 2–3] In support of her argument, Defendant points  
10 to the plea document containing hand-written language stating, “[Department of  
11 Corrections] for nine years from [September] 9, 2014, with credit for pre-sentence  
12 confinement and time served.” [MIO 3; RP 186] We note, however, that this language  
13 refers to Defendant’s understanding of the range of possible sentences for the  
14 violation and not a sentence actually imposed. It appears from a review of Odyssey  
15 that a subsequent commitment order was entered on November 9, 2015, ordering  
16 Defendant to complete a sixty-day diagnostic evaluation at the Department of  
17 Corrections, but no judgment and sentence has been ordered. We therefore conclude  
18 Defendant’s probation revocation is non-final and dismiss for lack of a final order. *See*

1 *State v. Garcia*, 1983-NMCA-017, ¶ 25, 99 N.M. 466, 659 P.2d 918 (holding that, in  
2 a criminal case, the final judgment is the judgment and sentence or an order  
3 dismissing all the charges against the defendant); *see also Thornton v. Gamble*, 1984-  
4 NMCA-093, ¶ 15, 101 N.M. 764, 688 P.2d 1268 (holding that when a final judgment  
5 has not been entered, an appellate court lacks jurisdiction and must dismiss).

6 {3} As we noted in our proposed disposition, even if we concluded Defendant’s  
7 case was final, which we do not, Defendant waived her right to appeal by entering an  
8 unconditional plea. [CN 3] Defendant concedes her plea was unconditional but asks  
9 this Court to use its discretion to consider the merits of her argument, because, she  
10 argues, the district court lacked jurisdiction to revoke her probation. [MIO 3-4] This  
11 Court may consider jurisdictional issues for the first time on appeal following entry  
12 of a voluntary guilty plea. *See State v. Chavarria*, 2009-NMSC-020, ¶ 14, 146 N.M.  
13 251, 208 P.3d 896 (recognizing that a voluntary guilty plea ordinarily constitutes a  
14 waiver of the defendant’s right to appeal his conviction on other than jurisdictional  
15 grounds, but that an illegal sentence (such as one not authorized by the applicable  
16 statute) may be challenged for the first time on appeal). However, as Defendant  
17 acknowledges, dismissal of a probation revocation petition based on violation of time  
18 limits is discretionary. *See Rule 5-805(L)* (“[T]he court *may* dismiss the motion to

1 revoke probation for violating any of the time limits in this rule.” (emphasis added)).  
2 [MIO 4] Thus, the district court did not lack jurisdiction to accept Defendant’s guilty  
3 plea. We therefore conclude Defendant does not raise a jurisdictional issue that can  
4 properly be considered for the first time on appeal after an unconditional plea and  
5 decline to consider the merits of her motion to dismiss the revocation petition.

6 {4} Accordingly, for the reasons stated above and this Court’s notice of proposed  
7 disposition, we dismiss.

8 {5} **IT IS SO ORDERED.**

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M. MONICA ZAMORA, Judge

11 **WE CONCUR:**

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JONATHAN B. SUTIN, Judge

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RODERICK T. KENNEDY, Judge