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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 **v.**

No. 34,940

5 **JESUS JOSE LINAM,**

6 **Defendant-Appellant.**

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

8 **Angela Jewell, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Jorge A. Alvarado, Chief Public Defender

13 J.K. Theodosia Johnson, 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 memorandum

20 in opposition. We affirm.

1 {2} Defendant continues to challenge the sufficiency of the evidence to support the
2 revocation of his probation. “In a probation revocation proceeding, the [s]tate bears
3 the burden of establishing a probation violation with a reasonable certainty.” *State v.*
4 *Leon*, 2013-NMCA-011, ¶ 36, 292 P.3d 493. “To establish a violation of a probation
5 agreement, the obligation is on the [s]tate to prove willful conduct on the part of the
6 probationer so as to satisfy the applicable burden of proof.” *In re Bruno R.*,
7 2003-NMCA-057, ¶ 11, 133 N.M. 566, 66 P.3d 339; *see State v. Martinez*,
8 1989-NMCA-036, ¶ 8, 108 N.M. 604, 775 P.2d 1321 (explaining that probation
9 should not be revoked where the violation is not willful, in that it resulted from factors
10 beyond a probationer’s control).

11 {3} Here, Defendant apparently did not contest the State’s claim that he violated
12 probation conditions, including the duty to report. [DS 4] Instead, Defendant claimed
13 that he did not know that he was still on probation after the district court issued an
14 order on the first probation violation. [DS 4-5] In other words, Defendant is
15 challenging the sufficiency of the evidence with respect to the willfulness of the
16 violations. The record indicates that Defendant’s initial probation violation resulted
17 in an order that continued probation. [RP 53] Notwithstanding the express language
18 of the order, Defendant apparently argued at the second probation hearing that he
19 thought that he was no longer on probation. [DS 4-5] However, in addition to the

1 order on the first probation violation, the district court reviewed the transcript of the
2 sentencing hearing on the first probation violation. [DS 5] The transcript indicated that
3 the judge at that hearing had told Defendant that his probation would be reinstated
4 after a period of incarceration. Given this evidence, we conclude that there was
5 sufficient evidence to show that Defendant willfully violated probation as alleged in
6 the second motion to revoke probation. *Cf. State v. Sutphin*, 1988-NMSC-031, ¶ 21,
7 107 N.M. 126, 753 P.2d 1314 (noting that the factfinder is free to reject a defendant's
8 version of events).

9 {4} For the reasons set forth above, we affirm.

10 {5} **IT IS SO ORDERED.**

11 _____
12 **J. MILES HANISEE, Judge**

13 **WE CONCUR:**

14 _____
15 **RODERICK T. KENNEDY, Judge**

16 _____
17 **JONATHAN B. SUTIN, Judge**