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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. 35,039

5 **SCOTT BROTHERTON,**

6 Defendant-Appellant.

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

8 **Mark A. Macaron, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 L. Helen Bennett

13 Albuquerque, NM

14 for Appellant

15 **MEMORANDUM OPINION**

16 **KENNEDY, Judge.**

17 {1} Defendant, Scott Brotherton, appeals from the district court's order revoking

18 his probation. We issued a notice of proposed summary disposition proposing to

1 affirm. Appellant has responded with a timely memorandum in opposition, which we
2 have duly considered. We remain unpersuaded that our initial proposed summary
3 disposition was incorrect, and we therefore affirm.

4 **DISCUSSION**

5 {2} Defendant continues to argue that the district court erred in revoking his
6 probation. Specifically, Defendant argues that he was not on probation when the acts
7 constituting the violations occurred, and therefore, probation could not be revoked.
8 [MIO 1-4] We review this issue de novo. *See State v. Ordunez*, 2012-NMSC-024, ¶
9 6, 283 P.3d 282 (reviewing the question of whether the defendant's term of probation
10 had expired when the district court revoked probation as a question of law subject to
11 de novo review).

12 {3} Our review of the record reveals the following procedural history. On June 11,
13 2015, the State filed a third motion to revoke Defendant's probation, alleging in
14 relevant part that he had violated probation by giving a false name on arrest to an
15 officer and by leaving the county of probation without permission. The State alleged
16 that these violations occurred on June 2, 2015. [RP 170-172] The district court held
17 a revocation hearing on August 4, 2015, and it entered its order revoking probation
18 on August 5, 2015. [RP 210]

19 {4} Defendant relies on an amended order of probation that he signed on December
20 17, 2014, which states that his term of probation ends on April 5, 2015, to support his

1 argument that he was not on probation in August of 2015. [RP 159, MIO 1-4] In our
2 notice of proposed summary disposition, we recognized that such an order exists in
3 the record. [RP 159] However, we noted that the record also contains an amended
4 second order of probation, signed by Defendant on April 6, 2015, which states that his
5 probation continues until August 8, 2015. [RP 162] The district court held the
6 revocation hearing on August 4, 2015, and entered its order revoking probation on
7 August 5, 2015, within Defendant’s term of probation according to the amended
8 second order. [RP 210] We therefore reject Defendant’s argument that his term of
9 probation had expired when the district court held the probation revocation hearing.

10 {5} Defendant also argues in his memorandum in opposition that his “good time
11 figuring” sheets, which were not introduced into evidence below, would prove that he
12 was not on probation when the violations occurred. [MIO 2-3] However, as such
13 evidence was not introduced below, we are not in a position to review this claim. *See*
14 *State v. Reynolds*, 1990-NMCA-122, ¶ 16, 111 N.M. 263, 804 P.2d 1082 (“Matters
15 outside the record present no issue for review.”).

16 {6} For these reasons we affirm.

17 {7} **IT IS SO ORDERED.**

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RODERICK T. KENNEDY, Judge

1 **WE CONCUR:**

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3 **JAMES J. WECHSLER, Judge**

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5 **LINDA M. VANZI, Judge**