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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. A-1-CA-36981

5 **PERLA MARQUEZ,**

6 Defendant-Appellant.

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

8 **George P. Eichwald, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 Bennett J. Baur, Chief Public Defender

13 Kathleen T. Baldridge, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **HANISEE, Judge.**

1 {1} Defendant appeals from a district court order revoking her probation. We issued
2 a calendar notice proposing to affirm. Defendant has responded with a memorandum
3 in opposition. Not persuaded, we affirm.

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

14 {3} Here, the State alleged that Defendant violated Standard Condition No. 2, which
15 required her to report to her probation officer. [RP 145] At the hearing, her probation
16 officer testified that Defendant failed to report as ordered, failed to make any contact
17 after sentencing, and that her whereabouts had been unknown. [MIO 2; DS 2]
18 Defendant testified and admitted that she did not report as required. [MIO 2; DS 2]
19 The court, sitting as fact-finder, was free to reject Defendant’s explanations for her

1 failure to report. *See State v. Cabezuela*, 2011-NMSC-041, ¶ 45, 150 N.M. 654, 265
2 P.3d 705. Under these circumstances, we conclude that the evidence was sufficient to
3 support the revocation of Defendant's probation.

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

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

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7

J. MILES HANISEE, Judge

8 **WE CONCUR:**

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MICHAEL E. VIGIL, Judge

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12

M. MONICA ZAMORA, Judge