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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. 34,408

5 **SHAYNE SWANN,**

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 Kathleen T. Baldrige, Assistant Appellate Defender

14 Santa Fe, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **GARCIA, Judge.**

18 {1} Defendant Shayne Swann appeals from the revocation of his probation,

1 challenging the sufficiency of the evidence to establish that he violated the conditions
2 of his probation. Unpersuaded by Defendant's docketing statement, we entered a
3 notice of proposed summary disposition, proposing to affirm. Defendant has filed a
4 memorandum in opposition to our notice. We remain unpersuaded and therefore
5 affirm.

6 {2} On appeal, Defendant contends that the district court abused its discretion by
7 finding that he violated his probation. [DS 5; MIO 3-5] Our notice detailed the
8 relevant facts for this issue and set forth the law that we believed controlled. Applying
9 the law to the facts, we proposed to conclude that there was ample evidence to support
10 the revocation of Defendant's probation. In response, Defendant does not assert that
11 our account of the evidence upon which we proposed to rely was incorrect; further,
12 his response does not assert any new factual or legal argument that persuades this
13 Court that our notice was incorrect regarding the sufficiency of the evidence. *See State*
14 *v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M. 421, 759 P.2d 1003 (stating that a
15 party responding to a summary calendar notice must come forward and specifically
16 point out errors of law and fact, and the repetition of earlier arguments does not fulfill
17 this requirement), *superceded by statute on other grounds as stated in State v. Harris*,
18 2013-NMCA-031, ¶ 3, 297 P.3d 374. Defendant's memorandum in opposition focuses
19 on his own testimony, which contradicted the testimony of the State's two witnesses,

1 and on this basis, Defendant asserts that there was no “sufficient reliable evidence to
2 support [the district court’s] findings.” [MIO 5] This argument is unpersuasive. On
3 appeal, “[w]e defer to the district court when it weighs the credibility of witnesses and
4 resolves conflicts in witness testimony.” *State v. Salas*, 1999-NMCA-099, ¶ 13, 127
5 N.M. 686, 986 P.2d 482. The district court could have properly relied on evidence that
6 contradicted Defendant’s version of the facts, *State v. Rojo*, 1999-NMSC-001, ¶
7 19,126 N.M. 438, 971 P.2d 829, and it appears to have done just that in this case. In
8 short, we perceive no error in the proceedings below, and on the basis of our proposed
9 disposition, we hold that sufficient evidence supports the revocation of Defendant’s
10 probation.

11 {3} For the reasons set forth in our notice and this opinion, we affirm.

12 {4} **IT IS SO ORDERED.**

13

14

TIMOTHY L. GARCIA, Judge

15 **WE CONCUR:**

16

RODERICK T. KENNEDY, Judge

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2 **LINDA M. VANZI, Judge**