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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. 34,688

5 **JON MANUEL MORA,**

6 Defendant-Appellant.

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

8 **Angela J. Jewell, District Judge-Pro Tem**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 Kenneth H. Stalter, Assistant Attorney General

12 Albuquerque, NM

13 for Appellee

14 Jorge A. Alvarado, Chief Public Defender

15 Santa Fe, NM

16 for Appellant

1 **MEMORANDUM OPINION**

2 **VIGIL, Chief Judge.**

3 {1} Defendant appeals from a district court order revoking his probation. We issued
4 a calendar notice proposing to reverse. The State has filed a memorandum in
5 opposition. Not persuaded by the State’s memorandum, we reverse the district court.

6 {2} In this appeal, Defendant has challenged the sufficiency of the evidence to
7 support the revocation of his probation. Initially, we reject the State’s position that this
8 case is moot because Defendant has served his full sentence. [MIO 4] Our
9 disagreement with the State is due to the fact that the revocation of probation in this
10 case could be viewed negatively by any court considering the option of probation in
11 any future criminal proceeding involving Defendant. *See generally State v. Sergio B.*,
12 2002-NMCA-070, ¶ 10, 132 N.M. 375, 48 P.3d 764 (observing that courts will
13 address merits of case that is otherwise moot where there may be future collateral
14 consequences).

15 {3} With respect to the merits, “[in] a probation revocation proceeding, the State
16 bears the burden of establishing a probation violation with a reasonable certainty.” *See*
17 *State v. Leon*, 2013-NMCA-011, ¶ 36, 292 P.3d 493. “To establish a violation of a
18 probation agreement, the obligation is on the State to prove willful conduct on the part
19 of the probationer so as to satisfy the applicable burden of proof.” *In Re Bruno R.*,

1 2003-NMCA-057, ¶ 11, 133 N.M. 566, 66 P.3d 339; *see also State v. Martinez,*
2 1989-NMCA-036, ¶ 8, 108 N.M. 604, 775 P.2d 1321 (explaining that probation
3 should not be revoked where the violation is not willful, in that it resulted from factors
4 beyond a probationer’s control).

5 {4} The district court found that Defendant violated the condition of probation
6 relating to Defendant’s association with other individuals. [RP 128, 130] Specifically,
7 this condition of probation prohibited Defendant from associating with people
8 “identified” by Defendant’s probation officer to be “detrimental” to his probation
9 supervision. [RP 128] In this case, it appears that the court based its finding on the
10 presence in Defendant’s residence of a woman who had drugs in her purse. The
11 district court did not find that Defendant knew about the drugs, or that he was aware
12 of information indicating that he should not associate with her. Instead, the district
13 court determined that Defendant had an affirmative obligation to inquire about
14 individuals he associated with to make sure that they were not “detrimental” to
15 probation. [MIO 8] However, the State’s position in effect expands the requirement
16 that a violation be willful to include situations where a defendant is negligent. As
17 explained above, our case law is clear that there must be a willful violation, and in the
18 absence of express language requiring Defendant to have made inquiries to his
19 associates, we believe the district court erred. Although the State contends that

1 Defendant could have simply asked the woman if she had drugs [MIO 10], the
2 definition of “detrimental” is so broad, that a defendant would have to protect himself
3 by having a checklist of questions to ask each person he associates with. Again, in the
4 absence of any evidence indicating that Defendant knew that the woman was
5 “detrimental,” we conclude that the evidence is insufficient to support the revocation.

6 {5} For the reasons set forth above, we reverse.

7 {6} **IT IS SO ORDERED.**

8

9

MICHAEL E. VIGIL, Chief Judge

10 **WE CONCUR:**

11

12 **JAMES J. WECHSLER, Judge**

13

14 **JONATHAN B. SUTIN, Judge**