

1 a memorandum in opposition, which we have duly considered. Unpersuaded, we
2 affirm.

3 {2} In his docketing statement, Defendant asserted that the district court abused its
4 discretion in revoking his probation because there was insufficient evidence to support
5 a violation. [DS 5-6] *See State v. Martinez*, 1989-NMCA-036, ¶ 5, 108 N.M. 604, 775
6 P.2d 1321 (“We review the trial court’s decision to revoke probation under an abuse
7 of discretion.”). In this Court’s calendar notice, we proposed to conclude that, based
8 on the testimony provided by Defendant’s probation officer, there was sufficient
9 evidence to establish to a reasonable certainty that Defendant violated his probation
10 by using drugs and failing to seek, obtain, and maintain full-time employment. [CN
11 2-4]

12 {3} In his memorandum in opposition to our notice of proposed disposition,
13 Defendant does not point out specific errors in fact or law. *See Hennessy v. Duryea*,
14 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have repeatedly
15 held that, in summary calendar cases, the burden is on the party opposing the proposed
16 disposition to clearly point out errors in fact or law.”). Nevertheless, Defendant
17 maintains that the State failed to present sufficient evidence to establish that he used
18 drugs or failed to seek employment. [MIO 1]

1 {4} With respect to his violation for drug use, Defendant acknowledges that his
2 probation officer testified that he “failed a random UA and thereafter admitted to
3 using methamphetamine.” [MIO 6] However, Defendant asserts that this evidence was
4 insufficient because “the UA results were not in evidence and [Defendant] did not
5 testify or otherwise acknowledge that he made such an admission to his [probation
6 officer].” [MIO 6] We are not persuaded by Defendant’s argument, and we conclude
7 that the State introduced sufficient proof—through his probation officer’s
8 testimony—which would incline “a reasonable and impartial mind to the belief that
9 [D]efendant . . . violated the terms of probation [by using drugs].” *Martinez*, 1989-
10 NMCA-036, ¶ 4.

11 {5} With respect to his violation for failing to seek, obtain, and maintain full-time
12 employment, Defendant argues that there was insufficient evidence that he willfully
13 failed to seek and obtain employment during his term of probation. [MIO 6-8] *See In*
14 *re Bruno R.*, 2003-NMCA-057, ¶ 11, 133 N.M. 566, 66 P.3d 339 (“To establish a
15 violation of a probation agreement, the obligation is on the State to prove willful
16 conduct on the part of the probationer so as to satisfy the applicable burden of
17 proof.”). Defendant asserts that his probation officer acknowledged that Defendant
18 had disclosed to him that Defendant had been experiencing problems with his mental
19 and physical health, and Defendant claims that *if* he had failed to seek and obtain

1 employment, “there is evidence that it could have been the result of his deteriorating
2 health.” [MIO 7] Defendant further claims that “[t]he record is simply silent on the
3 length of time that [Defendant] was having problems with his health. He could very
4 well have been experiencing health problems throughout his term of probation and for
5 many years; it is unknown.” [MIO 7]

6 {6} We acknowledge that willful conduct is a requisite. However, as we have
7 previously stated, “[o]nce the [S]tate offers proof of a breach of a material condition
8 of probation, [D]efendant must come forward with evidence [to show that his
9 non-compliance] was not willful.” *State v. Parsons*, 1986-NMCA-027, ¶ 25, 104 N.M.
10 123, 717 P.2d 99; *see Martinez*, 1989-NMCA-036, ¶ 8 (explaining that probation
11 should not be revoked where the violation is not willful, in that it resulted from factors
12 beyond a probationer’s control). “[I]f [D]efendant fails to carry his burden, then the
13 trial court is within its discretion in revoking [Defendant’s probation].” *Martinez*,
14 1989-NMCA-036, ¶ 8. In the present case, there is no indication that Defendant came
15 forward with evidence to show that his failure to seek and obtain employment
16 throughout his probation was somehow not willful. Therefore, we conclude that
17 Defendant did not carry his burden, and the district court was within its discretion in
18 revoking his probation for failing to seek and obtain employment. Moreover, as
19 Defendant acknowledges, this Court may affirm the revocation if there is sufficient

1 evidence supporting just one violation [MIO 6, 8], and as discussed above, there was
2 sufficient evidence to support Defendant’s violation for drug use. *See State v. Leon*,
3 2013-NMCA-011, ¶ 37, 292 P.3d 493 (stating that “although [the d]efendant
4 challenges the sufficiency of the evidence supporting each of his probation violations,
5 if there is sufficient evidence to support just one violation, we will find the district
6 court’s order was proper”).

7 {7} Thus, for the reasons stated above and in this Court’s notice of proposed
8 disposition, we conclude that there was sufficient evidence to support the district
9 court’s determination that Defendant violated his probation agreement. Accordingly,
10 we affirm the revocation of Defendant’s probation.

11 {8} **IT IS SO ORDERED.**

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M. MONICA ZAMORA, Judge

14 **WE CONCUR:**

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TIMOTHY L. GARCIA, Judge

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J. MILES HANISEE, Judge