



1 {1} Defendant Karina Aguilar appeals from the district court’s denial of her motion  
2 to modify the conditions of her probation to transfer her from supervised to  
3 unsupervised probation. [DS 2-3; RP 37, 44, 46] This Court issued a notice proposing  
4 summary reversal. [CN 1,4] The State filed a memorandum in opposition, which we  
5 have duly considered. Remaining unpersuaded, we reverse.

6 {2} Defendant argues on appeal the district court erroneously denied her motion to  
7 modify the conditions of her probation, pursuant to NMSA 1978, Section 31-21-21  
8 (1963), from supervised to unsupervised upon the district court’s mistaken belief it  
9 lacked the jurisdiction to do so because the time for reduction of a sentence under  
10 Rule 5-801 NMRA had expired. [DS 4] As we noted in our proposed disposition, our  
11 Supreme Court has previously interpreted Section 31-21-21 “to grant the district court  
12 the discretion to modify conditions of probation in appropriate cases.” *State v.*  
13 *Trujillo*, 1994-NMSC-066, ¶ 13, 117 N.M. 769, 877 P.2d 575. [CN 3] However, the  
14 district court in *Trujillo* was determined to have abused its discretion in modifying the  
15 defendant’s probation because the modification violated the terms of a valid plea  
16 agreement. *Id.* ¶¶ 14-15. [CN 3] As we pointed out in our notice, unlike the plea in  
17 *Trujillo*, the plea agreement in the present case did not include any specific terms of  
18 Defendant’s sentence, beyond a two-year cap on incarceration at initial sentencing.  
19 [CN 3] Thus, we proposed to hold modification of the supervision terms of

1 Defendant’s probation would not result in an impermissible modification of the plea  
2 agreement in the manner the elimination of in-patient substance abuse treatment  
3 violated the terms of the plea agreement in *Trujillo. Id.* ¶¶ 14–15.

4 {3} In its memorandum in opposition, as in its response to Defendant’s motion  
5 below [RP 39], the State continues to argue the district court lacked jurisdiction to  
6 modify the terms of Defendant’s probation and supervision level because her motion  
7 was untimely under Rule 5-801. [MIO 4] However, as we pointed out in our notice,  
8 Rule 5-801 pertains to reduction of a sentence. *See* Rule 5-801 (“A motion to *reduce*  
9 *a sentence* may be filed within ninety (90) days after the sentence is imposed[.]. . . A  
10 motion to *reduce a sentence* may also be filed upon revocation of probation as  
11 provided by law.” (emphasis added)). The State argues a modification of the terms of  
12 Defendant’s probation from supervised to unsupervised “is a functional equivalent of  
13 a motion to reduce sentence.” [MIO 4] The State cites no authority in support of this  
14 proposition, and, therefore, we find the State’s argument unavailing. *See State v. Vigil-*  
15 *Giron*, 2014-NMCA-069, ¶ 60, 327 P.3d 1129 (“[A]ppellate courts will not consider  
16 an issue if no authority is cited in support of the issue and that, given no cited  
17 authority, we assume no such authority exists[.]”).

18 {4} The State goes on to argue, while Section 31-21-21 “reasonably can be read to  
19 grant the district court the discretion to modify conditions of probation in appropriate

1 cases[,]” *Trujillo* did not set forth any guidelines for the application of Section 31-21-  
2 21. *Trujillo*, 1994-NMSC-066, ¶ 13. [MIO 5] The appellate court reviews a sentence  
3 imposed for abuse of discretion. The trial court does not abuse its discretion by  
4 imposing a sentence authorized by law. *See State v. Cumpston*, 2000-NMCA-033, ¶¶ 9-  
5 10, 129 N.M. 47, 1 P.3d 429. Given the discretion granted to district courts in  
6 sentencing and modification of conditions of probation, the plea agreement’s silence  
7 regarding the conditions or supervision level of Defendant’s probation, and the State’s  
8 failure to articulate why the district court’s application of Section 31-21-21 should be  
9 subject to particular guidelines or factors, we decline to determine whether the present  
10 case is an appropriate case for the district court’s exercise of discretion and leave the  
11 application of Section 31-21-21 to the district court in the first instance.

12 {5} Therefore, based on the reasons explained above and in this Court’s notice of  
13 proposed disposition, we reverse.

14 {6} **IT IS SO ORDERED.**

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**M. MONICA ZAMORA, Judge**

17 **WE CONCUR:**

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**JAMES J. WECHSLER, Judge**

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2 **JONATHAN B. SUTIN, Judge**