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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-36482

5 **RAMIRO GARCIA-LARONDO,**

6 Defendant-Appellant.

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

8 **Angela J. Jewell, 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. Baldrige, Assistant Appellate Defender

14 Rose M. Osborne, Assistant Appellate Defender

15 Santa Fe, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **SUTIN, Judge.**

1 {1} Defendant is appealing from an order revoking his probation. We issued a
2 calendar notice proposing to affirm. Defendant has responded with a memorandum
3 in opposition. We affirm.

4 {2} Initially, we note that there are two separate records because the two cases were
5 initially filed separately but were consolidated for plea and sentencing purposes. All
6 references will be to the record in D-202-CR-2014-04505.

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

17 {4} Here, after an evidentiary hearing, the district court determined that Defendant
18 had concealed his identity, had failed to report, had failed to notify of his change of
19 address, had failed to comply with the requirements of the Community Corrections

1 Unit, had failed to permit visits to his residence, had failed to comply with drug testing
2 and hotline requirements, and had failed to provide urine for testing. [MIO 3; RP 183]
3 These actions by Defendant violated multiple terms of his probation order. [RP 158-
4 59]

5 {5} In his memorandum in opposition, Defendant states that there is nothing in the
6 record that explains why he violated the terms of his probation. [MIO 5] However,
7 Defendant bore the burden of presenting evidence to excuse noncompliance, by
8 demonstrating that the violation resulted from factors beyond his control. *See State v.*
9 *Parsons*, 1986-NMCA-027, ¶ 25, 104 N.M. 123, 717 P.2d 99 (“Once the
10 [prosecution] proof of a breach of a material condition of probation, the defendant
11 must come forward with evidence [to show that his non-compliance] was not
12 willful.”). Defendant’s memorandum otherwise does not assert any error in facts or
13 law in our calendar notice. *See State v. Mondragon*, 1988-NMCA-027, ¶ 10, 107 N.M.
14 421, 759 P.2d 1003 (stating that the party “responding to a summary calendar notice
15 must come forward and specifically point out errors of law and fact” and the repetition
16 of earlier arguments does not fulfill this requirement), *superseded by statute on other*
17 *grounds as stated in State v. Harris*, 2013-NMCA-031, ¶ 3, 297 P.3d 374.

18 {6} For the reasons set forth in this opinion, we affirm.

19 {7} **IT IS SO ORDERED.**

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2

JONATHAN B. SUTIN, Judge

3 **WE CONCUR:**

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5 **MICHAEL E. VIGIL, Judge**

6

7 **TIMOTHY L. GARCIA, Judge**