



1 hearing was not commenced within the time limits set forth by Rule 5-805 NMRA.  
2 [DS 2-4] We issued a notice proposing to affirm on the ground Defendant had not  
3 shown the district court abused its discretion. [CN 4-5] Defendant has filed a  
4 memorandum in opposition, which we have duly considered. Unpersuaded, we affirm.

5 {2} Defendant continues to argue the district court erred in denying dismissal of the  
6 probation violation based on the State's negligence in failing to assure its petition to  
7 revoke Defendant's probation was adjudicated in a timely fashion. [MIO 5] Defendant  
8 acknowledges dismissal pursuant to Rule 5-805(L) is discretionary but argues  
9 dismissal was necessary based on due process principles and because Defendant did  
10 not receive the lesser remedy of release pending adjudication. [MIO 5, 12]

11 {3} Defendant first argues due process principles applicable to speedy trial rights,  
12 though admittedly not applicable to probation revocation proceedings, required the  
13 district court to dismiss the petition to revoke Defendant's probation. [MIO 5] In  
14 support of this argument, Defendant relies largely on previous versions of Rule 5-805,  
15 in which dismissal was mandatory, and on cases based upon those previous versions  
16 of the rule to argue this Court should consider this history of Rule 5-805 and interpret  
17 the present discretionary dismissal language to require dismissal. [MIO 6-9]  
18 Defendant cites no authority supporting his contention a district court abuses its  
19 discretion for declining to dismiss a probation revocation petition on due process

1 grounds and instead relies on policy arguments. “[A]ppellate courts will not consider  
2 an issue if no authority is cited in support of the issue and that, given no cited  
3 authority, we assume no such authority exists.” *State v. Vigil-Giron*,  
4 2014-NMCA-069, ¶ 60, 327 P.3d 1129. Based on the plain language of Rule 5-805(H)  
5 and the lack of authority suggesting dismissal of a petition is anything other than  
6 discretionary, we decline to enunciate a different standard for dismissal of a petition  
7 to revoke probation on timeliness grounds. *See State v. Miller*, 2008-NMCA-048, ¶  
8 11, 143 N.M. 777, 182 P.3d 158 (“We apply the same rules of construction to  
9 procedural rules adopted by the Supreme Court as we do to statutes.”).

10 {4} Turning to Defendant’s argument regarding dismissal as a mandatory  
11 alternative remedy to release, Defendant asks us to re-weigh evidence regarding the  
12 State’s conduct and to determine the State acted in bad faith, justifying dismissal of  
13 the probation violation petition. [MIO 15-16] We again point out we cannot say the  
14 district court abused its discretion unless we can characterize its ruling as clearly  
15 untenable or not justified by reason. *State v. Rojo*, 1999-NMSC-001, ¶ 41, 126 N.M.  
16 438, 971 P.2d 829. Despite the fact this Court will not re-weigh evidence, it does not  
17 appear the district court’s ruling the State was negligent and did not justify dismissal  
18 was untenable or not justified by reason. *Bustos v. Hyundai Motor Co.*, 2010-NMCA-  
19 090, ¶ 34, 149 N.M. 1, 243 P.3d 440. (“[A]rguments [that] only go to the weight of

1 the evidence [are] beyond the scope of our review.”). Moreover, Defendant cites no  
2 authority indicating dismissal is required on timeliness grounds if a defendant is not  
3 released earlier, and it does not appear Defendant ever sought release based on a  
4 violation of time limits. *Vigil-Giron*, 2014-NMCA-069, ¶ 60. Regarding Defendant’s  
5 arguments he was prejudiced by the inability to seek rehabilitative opportunities and  
6 employment had he been released, it is unclear whether Defendant would actually  
7 have been released from custody had the probation revocation proceedings been  
8 dismissed, given his recent convictions in another county and the lack of information  
9 regarding Defendant’s sentence in those cases.

10 {5} Therefore, for the reasons set forth in our notice of proposed disposition and  
11 herein, we affirm.

12 {6} **IT IS SO ORDERED.**

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**MICHAEL E. VIGIL, Judge**

15 **WE CONCUR:**

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**STEPHEN G. FRENCH, Judge**

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**DANIEL J. GALLEGOS, Judge**