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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-36743

5 **DIEGO RASCON,**

6 Defendant-Appellant.

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

8 **Jacqueline D. Flores, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 for Appellee

12 L. Helen Bennett, P.C.

13 Linda Helen Bennett

14 Albuquerque, NM

15 for Appellant

16 **MEMORANDUM OPINION**

17 **VIGIL, Judge.**

18 {1} Defendant appeals from the district court's first order revoking his probation,

19 imposing the habitual offender enhancement, committing him to the Department of

1 Corrections, and reinstating probation. On appeal, Defendant challenges the
2 sufficiency of the evidence to support the district court’s finding that Defendant
3 willfully violated his probation. This Court issued a calendar notice proposing to
4 affirm the revocation of Defendant’s probation. In response, Defendant has filed a
5 memorandum in opposition, which this Court has duly considered. Unpersuaded, we
6 affirm.

7 {2} In this Court’s calendar notice we detailed the evidence in Defendant’s
8 docketing statement and proposed to conclude that the evidence was sufficient to
9 incline “a reasonable and impartial mind to the belief that a defendant has violated the
10 terms of probation.” [CN 2 (quoting *State v. Martinez*, 1989-NMCA-036, ¶ 4, 108
11 N.M. 604, 775 P.2d 1321)] We further proposed to conclude that the evidence
12 presented was sufficient to establish that Defendant had knowingly and willfully
13 engaged in a pattern of conduct that violated his conditions of release. [CN 4-5] As
14 a result, we proposed to affirm.

15 {3} In response, Defendant maintains that there was insufficient evidence to support
16 the district court’s determination that he willfully violated the terms of his probation.
17 However, Defendant’s argument remains premised on challenging the weight and
18 credibility the district court placed on certain testimony and evidence. Because our
19 appellate courts do not reweigh evidence or reassess credibility, *see State v. Garcia*,

1 2011-NMSC-003, ¶ 5, 149 N.M. 185, 246 P.3d 1057 (“New Mexico appellate courts
2 will not invade the jury’s province as fact-finder by second-guess[ing] the jury’s
3 decision concerning the credibility of witnesses, reweigh[ing] the evidence, or
4 substitut[ing] its judgment for that of the jury.” (alterations in original) (internal
5 quotation marks and citation omitted)), Defendant’s argument is unpersuasive.

6 {4} Accordingly, for the reasons stated above and in this Court’s notice of proposed
7 disposition, we affirm the revocation of Defendant’s probation.

8 {5} **IT IS SO ORDERED.**

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10

MICHAEL E. VIGIL, Judge

11 **WE CONCUR:**

12

STEPHEN G. FRENCH, Judge

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EMIL J. KIEHNE, Judge
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