

1 {1} Defendant Christina Banghart-Portillo appeals the district court's order denying
2 her motion to correct an illegal sentence. To the extent Defendant raised issues with
3 the legality of her sentence that fall under Rule 5-802(A) NMRA, we transferred the
4 file to the New Mexico Supreme Court to consider that portion of Defendant's appeal.
5 On her remaining issues, Defendant contends that in her latest probation revocation,
6 (1) she was given an incorrect amount of credit for days previously served in
7 confinement and on probation, and (2) when her sentence was enhanced she had
8 already served her full sentence as to one of the charges she was convicted of, and the
9 district court had therefore lost jurisdiction to enhance her sentence as to that count.
10 This Court issued a notice of proposed disposition, proposing to affirm, in part, as to
11 the enhancement of Defendant's sentence, and reverse, in part, as to the calculation
12 of her time served. Defendant has filed a memorandum in opposition, and the State
13 has filed a notice of non-filing a memorandum in opposition, which we have duly
14 considered. Unpersuaded, we affirm, in part, and reverse, in part.

15 {2} In this Court's calendar notice, we proposed to reverse for recalculation of
16 Defendant's credit for days served on probation, as we saw no explanation for what
17 appeared to be a discrepancy in the later order giving Defendant credit for fewer days
18 served on probation than was granted to her in the earlier order. As the State concedes

1 such a discrepancy appears to exist, we reverse for recalculation of Defendant's time
2 served.

3 {3} We further proposed that as to Defendant's claim that the district court lost
4 jurisdiction, it did not appear that Defendant's judgment and sentence was structured
5 for time served on probation to correspond with any particular conviction, and we
6 proposed that Defendant had no reasonable expectation of finality as to count one or
7 any limitation on the enhancement prior to the completion of her entire probationary
8 period. *See State v. Yazzie*, 2018-NMCA-001, ¶ 14, 410 P.3d 220 (stating that,
9 "[b]ecause neither the plea agreement nor the judgment and sentence structured [the
10 d]efendant's sentence such that the time served on probation corresponded with a
11 particular conviction, [the d]efendant had no reasonable expectation of finality as to
12 [c]ount 1 or any limitation on the enhancement of [c]ount 1 prior to the completion of
13 his entire three-year period of probation"). Defendant was sentenced to eighteen
14 months enhanced by one year for count one, tampering with evidence. [RP 118] She
15 was sentenced to the same for count two, conspiracy to tamper with evidence. [Id.] She
16 She was sentenced to serve a total term of five years, with three suspended. [Id.] She
17 was given three years on probation. [Id.] As the probation term was not assigned to
18 run in accordance with either of the counts, but rather in total time, we proposed to

1 conclude that Defendant’s case was similar to that in *Yazzie* and she was thus still
2 subject to the district court’s jurisdiction for enhancement of both counts. [CN 4]

3 {4} In response, Defendant continues to argue that because her two counts were set
4 to run consecutively, and that “the most reasonable way to read her plea and sentence
5 was that she be required to serve 2.5 years on each count, run consecutively,” that the
6 district court had lost jurisdiction to enhance her sentence as to the first count. [MIO
7 6] Defendant, however, does not demonstrate how or point to any indication in the
8 record that her sentence was structured so that the total term of probation was divided
9 and portions assigned to run in accordance with either count and not total time.

10 {5} Because Defendant has not demonstrated that she had a reasonable expectation
11 of finality as to count one of her sentence, we conclude that Defendant has not
12 satisfied her burden to oppose the proposed summary disposition. *See Hennessy v.*
13 *Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 (“Our courts have
14 repeatedly held that, in summary calendar cases, the burden is on the party opposing
15 the proposed disposition to clearly point out errors in fact or law.”).

16 {6} Accordingly, we affirm, in part, and reverse, in part.

17 {7} **IT IS SO ORDERED.**

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MICHAEL E. VIGIL, Judge

1 **WE CONCUR:**

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3 **M. MONICA ZAMORA, Judge**

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5 **STEPHEN G. FRENCH, Judge**