

1 has filed a combined memorandum in opposition and motion to amend the docketing
2 statement. After due consideration, we remain unpersuaded. We therefore affirm.

3 {2} The pertinent background information was previously set forth in the notice of
4 proposed summary disposition. We will avoid undue repetition here and focus instead
5 on the content of the memorandum in opposition and motion to amend.

6 {3} To begin with the issue originally raised, we understand Defendant to continue
7 to argue that the district court abused its discretion by revoking her probation and
8 requiring her to serve the balance of her sentence. [MIO 3-6] However, in light of her
9 admitted violation, [MIO 2] as well as the acknowledged legality of the sentence,
10 [MIO 3] the district court acted well within its discretion. *See generally* NMSA 1978,
11 § 31-21-15(B) (2016); *State v. Duran*, 1998-NMCA-153, ¶ 41, 126 N.M. 60, 966 P.2d
12 768 (“There is no abuse of discretion if the sentence imposed is consistent with the
13 applicable statutory provisions.”). Although we understand Defendant to suggest that
14 lesser sanctions would have been appropriate, [MIO 3-4] the district court could
15 reasonably have differed in its assessment. In the final analysis, the district court was
16 under no obligation to continue Defendant’s probation. *See generally State v.*
17 *Mendoza*, 1978-NMSC-048, ¶ 5, 91 N.M. 688, 579 P.2d 1255 (“Probation is not a
18 right but a privilege.”).

19 {4} By her motion to amend, Defendant seeks to argue that the sentence imposed
20 in this case constitutes cruel and unusual punishment. [MIO 4-6] However, insofar as

1 Defendant entered an unconditional plea, [MIO 5; RP 66, 197] this argument is
2 foreclosed. *See State v. Chavarria*, 2009-NMSC-020, ¶¶ 14, 16, 146 N.M. 251, 208
3 P.3d 896 (declining to consider the merits of a claim that a lawful sentence imposed
4 following the entry of an unconditional plea constituted cruel and unusual punishment,
5 on grounds that such a plea effectively waives the right to challenge the
6 constitutionality of such a sentence on appeal, and observing that “a sentence
7 authorized by statute, but claimed to be cruel and unusual punishment under the state
8 and federal constitutions, does not implicate the jurisdiction of the sentencing court
9 and, therefore, may not be raised for the first time on appeal”). We therefore deny the
10 motion to amend. *See State v. Ibarra*, 1993-NMCA-040, ¶ 13, 116 N.M. 486, 864
11 P.2d 302 (indicating that if the issue which the defendant seeks to add to the docketing
12 statement is not viable, the motion to amend will be denied).

13 {5} Accordingly, for the reasons stated above and in the notice of proposed
14 summary disposition, we affirm.

15 {6} **IT IS SO ORDERED.**

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LINDA M. VANZI, Chief Judge

1 **WE CONCUR:**

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3 **STEPHEN G. FRENCH, Judge**

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5 **HENRY M. BOHNHOFF, Judge**