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## **You Can Run but ...: Tolling of Probation and Jurisdiction in New Mexico Criminal Cases**

Under New Mexico law, the courts maintain jurisdiction over criminal cases for the duration of the probationary period. It was made clear in the New Mexico Court of Appeals case of *State v. Jose Alfredo Ordunez* that once the probationary period has lapsed, the court loses jurisdiction over the defendant.

The *Ordunez* case held that any action by the state for violations of probation must be filed within the probationary period. As such, once the probationary period has lapsed, the State is barred from filing for a revocation of probation. In fact, this is what occurred in *Ordunez*. The State failed to file for revocation of probation prior to the end of the defendant's probationary period thereby defeating the court's jurisdiction.

Though not pivotal to the outcome of the case, the court also addressed the issue of tolling of the jurisdictional limits when a defendant absconds from justice. In other words, the court addressed what happens when the defendant disappears following a probation violation for which revocation could be filed.

As an aside, disappearing while on probation is typically itself a violation of probation. More often, a separate violation of probation precipitates the disappearance due to defendant's knowledge of the coming probation revocation and possible incarceration. There are defendants who mistakenly believe that if they disappear long enough for their probation to end, they are somehow off the hook.

The Court in *Ordunez* cited both statute and case law to the contrary. NMSA §31-21-15(C) states:

"if it is found that a warrant for the return of a probationer cannot be served, the probationer is a fugitive from justice. After hearing upon return, if it appears that he has violated the provisions of his release, the court shall determine whether the time from the date of violation to the date of his arrest, or any part of it, shall be counted as time served on probation."

It is clear from the language of the statute as well as the Court's language in *Ordunez* among other cases that "a probationer cannot defeat the district court's jurisdiction merely by remaining a fugitive from justice until he probation period has run."

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In short, as unpleasant as it may be, a violation of probation must be dealt with by a defendant. In fact, as many have found, the consequences of running from the violation are often more serious than the violation itself.

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