

ALBUQUERQUE CRIMINAL LAWYER BLOG

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Crackdown on DWI Continues in New Mexico With Increasing Penalties for Probation Violations

New Mexico continues its crackdown on DWI. In keeping with its goals, the consequences for DWI conviction are growing increasingly harsh in New Mexico. This is so for all levels of offenders, including first time DWI offenders.

In the past, and under sentencing for most crimes other than DWI offenses, a person placed on probation is given credit against his or her total sentence for all time served on probation. In other words, if a person is placed on one year of probation and violates 6 months in, he or she is exposed only to 6 months jail time on the remaining term of the sentence.

In the case of DWI offenders, the State of New Mexico has taken a fairly harsh position. For DWI offenders, there is no credit against the total deferred or suspended sentence for time spent on probation. As such, in the prior example, if a person violates 6 months in on a one year term of probation for a DWI offense, he or she is facing the full one year jail sentence.

The statutory language of NMSA §66-8-102(S) is clear stating in part, "the court may impose any sentence that the court could have originally imposed and credit shall not be given for time served by the offender on probation." The statute applies to all levels of DWI offenders including first time offenders. Lest anyone believe otherwise, the New Mexico Court of Appeals in *State v. Ordunez* states "Subsection (S)...is applicable to all levels of DWI offenders who violate probation..."

Subsection (S) was addressed in the *State v. Ordunez* in the context of jurisdiction following the lapse of probation. The primary concern in *Ordunez* was whether or not the court had lost jurisdiction over the defendant to implement the harsh provisions of Subsection (S).

In *Ordunez*, the defendant pled guilty to felony DWI. He was sentenced to 2 ½ years, with all but two suspended. This means he was only to serve 6 months in jail with 2 years of probation following release.

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Mr. Ordunez violated his probation in the last month of the 2 year probationary period. The State moved to revoke his probation seeking the full two year sentence term. Fortunately for Mr. Ordunez the case did not get to court prior to the expiration of his 2 year probation period.

Because his probationary period had lapsed prior to the probation revocation hearing, the district court held that the court had lost jurisdiction over Mr. Ordunez. The New Mexico Court of Appeals in *State v. Ordunez* agreed. As such, Mr. Ordunez was spared the consequences of the application of Subsection (S) to his violation of probation.

Mr. Ordunez dodged a bullet through sheer luck, overloaded district attorneys and overcrowded court dockets. In light of the ever increasing penalties for DWI, a DWI offender would do well to avoid even the smallest technical violations of probation. It is not worth the risks. And, it is unlikely that most will be so lucky as Mr. Ordunez in the case of motivated prosecutor and a receptive judge.

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