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**IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

**STATE OF NEW MEXICO,**

Plaintiff-Appellee,

v. **NO. 31,200**

**MICHAEL FISCHER,**

Defendant-Appellant.

**APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY**
**Diane Dal Santo, District Judge**

Gary K. King, Attorney General
Santa Fe, NM

for Appellee

Jacqueline L. Cooper, Chief Public Defender
Will O'Connell, Assistant Appellate Defender
Santa Fe, NM

for Appellant

**MEMORANDUM OPINION**

**WECHSLER, Judge.**

Defendant appeals the sufficiency of the evidence to support violation of his

probation. In our notice, we proposed to affirm. Defendant has timely responded. We have considered his arguments and not being persuaded, we affirm.

Defendant continues to argue that he did not wilfully fail to report to his probation officer as he was first in the hospital having surgery and then at home under doctor's orders for bed rest. He argues that, under those circumstances, it was impossible for him to report. As we pointed out in our notice, however, there was some portion of time between the surgery and later bed rest orders that was unaccounted for. During that time, there does not appear to have been any medical excuse and Defendant did not report to his probation officer. Therefore, there is sufficient evidence to support the conclusion that Defendant did not comply with the reporting requirement of his probation.

Further, Defendant continues to argue that the evidence was insufficient to support that he used illegal drugs. Even if we discount the evidence of a drug test as not being properly admissible, there was evidence that Defendant himself admitted to using illegal drugs. That admission alone is sufficient to support the conclusion that Defendant violated the condition of his probation that he not use illegal drugs. *See State v. Sanchez*, 109 N.M. 718, 720, 790 P.2d 515, 517 (Ct. App. 1990), *abrogated on other grounds by State v. Wilson*, 2011-NMSC-001, 149 N.M. 273, 248 P.3d 315.

For the reasons stated herein and in the notice of proposed disposition, we

affirm.

**IT IS SO ORDERED.**

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**JAMES J. WECHSLER, Judge**

**WE CONCUR:**

_____
**CELIA FOY CASTILLO, Chief Judge**

_____
**CYNTHIA A. FRY, Judge**