

**STATE V. PINEDA, 1968-NMCA-080, 79 N.M. 525, 445 P.2d 749 (Ct. App. 1968)**

**STATE of New Mexico, Plaintiff-Appellee,  
vs.  
Henry PINEDA, Defendant-Appellant**

No. 231

COURT OF APPEALS OF NEW MEXICO

1968-NMCA-080, 79 N.M. 525, 445 P.2d 749

September 27, 1968

APPEAL FROM THE DISTRICT COURT OF CHAVES COUNTY, REESE, JR., Judge

**COUNSEL**

E. Ray Phelps, Roswell, for appellant.

Boston E. Witt, Atty. Gen., Gary O'Dowd, Asst. Atty. Gen., Santa Fe, for appellee.

**JUDGES**

Wood, Judge. Spiess, C. J., and Oman, J., concur.

**AUTHOR: WOOD**

**OPINION**

{1} Denied{\*525} post-conviction relief under § 21-1-1(93), N.M.S.A.1953 (Supp.1967), defendant appeals. He contends that evidence was erroneously admitted at his trial because seized without a valid search warrant. The circumstances of this asserted illegal seizure were known to defendant at his trial. Accordingly, the question of use of illegally seized evidence is not a cognizable issue under § 21-1-1(93), supra. State v. Barton, 79 N.M. 70, 439 P.2d 719 (1968); State v. Fines, 78 N.M. 737, 437 P.2d 1006 (1968).

{2} Although defendant may not obtain a review of the seizure issue in a post-conviction proceeding, a companion case, which was a direct appeal, decided the issue on its merits. State v. Sedillo, 79 N.M. 289, 442 P.2d 601 (1968).

{3} The order denying relief is affirmed.

{4} It is so ordered.