

**STATE of New Mexico, Plaintiff-Appellee,
vs.
Kenneth D. MOSLEY, Defendant-Appellant**

No. 224

COURT OF APPEALS OF NEW MEXICO

1968-NMCA-077, 79 N.M. 514, 445 P.2d 391

September 13, 1968

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

COUNSEL

B. R. Baldock, Sanders & Bruin, Roswell, for defendant-appellant.

Boston E. Witt, Atty. Gen., David R. Sierra, Asst. Atty. Gen., Santa Fe, for plaintiff-appellee.

JUDGES

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

AUTHOR: WOOD

OPINION

{*515} OPINION

{1} Defendant's motion for post-conviction relief under § 21-1-1(93), N.M.S.A.1953, was denied without a hearing. His appeal raises three issues.

{2} 1. Defendant was charged by a criminal information. He claims that under N.M.Const. Art. XX, § 20, he was entitled to be indicted by a grand jury. The claim is without merit. Under N.M.Const. Art. II, § 14, a defendant may be charged either by grand jury action or by a criminal information. Flores v. State, (Ct.App.), 79 N.M. 420, 444 P.2d 605, decided August 9, 1968, and cases therein cited.

{3} 2. After being arrested and jailed in New Mexico defendant contends that he was released to a Texas sheriff, confined in a Texas jail for four days and then illegally returned to New Mexico. We assume, but do not decide, that this claim is true.

Defendant pled guilty in the trial court; he does not claim that his plea was involuntary. His claim of "illegal" return to New Mexico, be it a claim of illegal arrest or illegal extradition, was waived by his plea. *State v. Losolla*, 79 N.M. 296, 442 P.2d 786 (1968); *State v. Williams*, 78 N.M. 211, 430 P.2d 105 (1967); *State v. Blankenship*, 79 N.M. 178, 441 P.2d 218 (Ct.App.1968).

{4} 3. Defendant claims he was returned to New Mexico from Texas without extradition proceedings and without a waiver of extradition and that in being so returned he suffered cruel and unjust treatment. This claim is not a claim of cruelty in his punishment and does not raise an issue under U.S.Const., Amend. VIII and N.M.Const. Art. II, § 13. *State v. Peters*, 78 N.M. 224, 430 P.2d 382 (1967); *State v Blankenship*, supra.

{5} The order denying relief is affirmed.

{6} It is so ordered.