

STATE V. JOHNSON, 1970-NMCA-033, 81 N.M. 318, 466 P.2d 884 (Ct. App. 1970)

**STATE OF NEW MEXICO, Plaintiff-Appellee,
vs.
RICHARD L. JOHNSON, Defendant-Appellant**

No. 402

COURT OF APPEALS OF NEW MEXICO

1970-NMCA-033, 81 N.M. 318, 466 P.2d 884

March 06, 1970

Appeal from the District court of Otero County, Stanley, Judge

COUNSEL

JAMES A. MALONEY, Attorney General, JAMES V. NOBLE, Asst. Attorney General,
Santa Fe, New Mexico, Attorneys for Appellee.

DAN SOSA, JR., SOSA, GARZA & NEUMEYER, Las Cruces New Mexico, Attorney for
Appellant.

JUDGES

HENDLEY, Judge, wrote the opinion.

WE CONCUR:

Waldo Spiess, C.J., LaFel E. Oman, J.

AUTHOR: HENDLEY

OPINION

HENDLEY, Judge.

{1} Defendant's motion for post-conviction relief pursuant to § 21-1-1(93), N.M.S.A. 1953 (Supp. 1969) was denied after a hearing. Defendant appeals giving two grounds for reversal.

{2} We affirm.

"POINT I

"THE COURT'S FINDINGS OF FACT NUMBERED * * * ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE."

{3} Findings which are supported by substantial evidence will not be disturbed on appeal. State v. Moser, 80 N.M. 404, 456 P.2d 878 (1969).

{4} We have carefully examined the briefs and the transcript and find that the trial court's findings are supported.

"POINT II

"THE COURT ERRED IN FAILING TO GIVE DEFENDANT'S REQUESTED FINDINGS OF FACT NUMBER * * *."

{5} The requested findings complained of go to competence of defense counsel at the original trial. One of the findings attacked under Point I and found to be supported by substantial evidence is:

"At all times Mr. C. C. Chase, Jr., protected the constitutional rights, civil rights, all guarantees, due process of law, equal and just protection of laws for his client, Mr. Richard L. Johnson."

{6} When findings are supported by substantial evidence, refusal to make other findings opposed to or inconsistent with those findings is not error. Fox v. Doak, 78 N.M. 743, 438 P.2d 153 (1968); Hancock v. Berger, 77 N.M. 321, 422 P.2d 359 (1967); Gray v. J. P. (Bum) Gibbins, Inc., 75 N.M. 584, 408 P.2d 506 (1965).

{7} Affirmed.

{8} IT IS SO ORDERED.

WE CONCUR:

Waldo Spiess, C.J., LaFel E. Oman, J.