

**STATE V. TAFOYA, 1970-NMCA-088, 81 N.M. 686, 472 P.2d 651 (Ct. App. 1970)**

**STATE OF NEW MEXICO Plaintiff-Appellee  
vs.  
VICTOR TAFOYA, Defendant-Appellant**

No. 483

COURT OF APPEALS OF NEW MEXICO

1970-NMCA-088, 81 N.M. 686, 472 P.2d 651

July 02, 1970

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, SWOPE, Judge

**COUNSEL**

JAMES A. MALONEY, Attorney General, KENNETH A. CULLEN, JR., Ass't. Atty. Gen.,  
Santa Fe, New Mexico, Attorneys for Appellee.

JACOB CARIAN, WILLIAM C. BOWERS, Albuquerque, New Mexico, Attorneys for  
Appellant.

**JUDGES**

WOOD, Judge, wrote the opinion.

WE CONCUR:

Waldo Spiess, C.J., William R. Hendley, J.

**AUTHOR: WOOD**

**OPINION**

WOOD, Judge.

{1} Defendant moved for post-conviction relief under § 21-1-1(93), N.M.S.A. 1953 (Supp. 1969). The claims made in the motion were denied without a hearing. We do not review those claims because none stated a basis for post-conviction relief; defendant does not contend otherwise. Defendant asserts the trial court erred in failing to appoint counsel to represent him in connection with the motion and in denying the motion without a hearing. Since the motion stated no basis for relief, appointment of counsel was not required, *State v. Tapia*, 80 N.M. 477, 457 P.2d 996 (Ct. App. 1969), and the

trial court properly denied the motion without a hearing. *Nance v. State*, 80 N.M. 123, 452 P.2d 192 (Ct. App. 1969).

{2} Defendant also makes claims concerning an asserted waiver of proof and double jeopardy. They are raised for the first time in the appeal. Not having been presented to the trial court they will not be considered. *State v. Lujan*, 79 N.M. 525, 445 P.2d 749 (Ct. App. 1968); *State v. Sharp*, 79 N.M. 498, 445 P.2d 101 (Ct. App. 1968); *State v. Knerr*, 79 N.M. 133, 440 P.2d 808 (Ct. App. 1968).

{3} The order denying relief is affirmed.

{4} IT IS SO ORDERED.

WE CONCUR:

Waldo Spiess, C.J., William R. Hendley, J.