

STATE V. GARCIA, 1971-NMCA-060, 82 N.M. 536, 484 P.2d 756 (Ct. App. 1971)

**STATE OF NEW MEXICO, Plaintiff-Appellee,
vs.
DIANE GARCIA, Defendant-Appellant**

No. 634

COURT OF APPEALS OF NEW MEXICO

1971-NMCA-060, 82 N.M. 536, 484 P.2d 756

April 23, 1971

Appeal from the District Court of Curry County, Blythe, Judge

COUNSEL

DAVID L. NORVELL, Attorney General, JOHN A. DARDEN, Ass't. Atty. Gen., Santa Fe, New Mexico, Attorneys for Appellee.

CHESTER A. HUNKER, Clovis, New Mexico, Attorney for Appellant.

JUDGES

WOOD, Judge, wrote the opinion.

WE CONCUR:

Waldo Spiess, C.J., Lewis R. Sutin, J.

AUTHOR: WOOD

OPINION

WOOD, Judge.

{1} Defendant was prosecuted under 54-7-14, N.M.S.A. 1953 (Repl. Vol. 8, pt. 2, Supp. 1969) for the unlawful sale or delivery of marijuana. This is the general narcotics statute. Defendant contended before the trial court, and asserts here, that the prosecution should have been under 54-5-14, N.M.S.A. 1953 (Repl. Vol. 8, pt. 2), which is the special statute. We agree. This issue was decided in *State v. Riley*, 82 N.M. 235, 478 P.2d 563 (Ct. App. 1970). *Riley* has been applied in *State v. Thorn*, (Ct. App.), 82 N.M. 431, 483 P.2d 312, decided March 12, 1971; *State v. Rendleman*, 82 N.M. 346, 481 P.2d 708 (Ct. App. 1971), and *State v. McNeece*, 82 N.M. 345, 481 P.2d 707 (Ct. App.

1971). The State asserts that State v. Riley, supra, was wrongly decided. We disagree; instead, we reaffirm what was stated in the Riley opinion.

{2} The judgment and sentence is reversed. The cause is remanded with instructions to dismiss the charge against defendant under the general narcotics statute.

{3} IT IS SO ORDERED.

WE CONCUR:

Waldo Spiess, C.J., Lewis R. Sutin, J.