

STATE V. BREWTON, 1971-NMCA-120, 83 N.M. 50, 487 P.2d 1355 (Ct. App. 1971)

**STATE OF NEW MEXICO, Plaintiff-Appellee,
vs.
ALTON LEON BREWTON, Defendant-Appellant.**

No. 694

COURT OF APPEALS OF NEW MEXICO

1971-NMCA-120, 83 N.M. 50, 487 P.2d 1355

July 30, 1971

Appeal from the District Court of Santa Fe County, Montoya, Judge

COUNSEL

ROY G. HILL, Santa Fe, New Mexico, Attorney for Appellant.

DAVID L. NORVELL, Attorney General, THOMAS PATRICK WHELAN, Jr., Asst. Attorney General, Santa Fe, New Mexico, Attorneys for Appellee.

JUDGES

SUTIN, Judge, wrote the opinion.

WE CONCUR:

Joe W. Wood, C.J., William R. Hendley, J.

AUTHOR: SUTIN

OPINION

SUTIN, Judge.

{1} Brewton seeks post conviction relief. He pleaded guilty to a misdemeanor committed {*51} in the state penitentiary while serving a prior sentence. He seeks credit on his sentence for the 28 days which elapsed between the day he was served with a warrant for his arrest and the day when judgment and sentence was entered on his plea of guilty. Reliance is placed on § 40A-29-25, N.M.S.A. 1953 (Repl. Vol. 6, Supp. 1969). This section is not applicable because his confinement during this period was pursuant to his prior sentence.

{2} The trial court order which dismissed Brewton's motion for amended judgment and sentence is affirmed.

{3} IT IS SO ORDERED.

WE CONCUR:

Joe W. Wood, C.J., William R. Hendley, J.