

STATE OF NEW MEXICO, Plaintiff-Appellee.

vs.

IVEY JONES, Defendant-Appellant

No. 966

COURT OF APPEALS OF NEW MEXICO

1972-NMCA-170, 84 N.M. 500, 505 P.2d 445

December 22, 1972

Appeal from the District Court of Chaves County, Snead, Judge

COUNSEL

ALAN A. NORWOOD, Roswell, New Mexico, Attorney for Appellant, DAVID L. NORVELL, Attorney General, KENNETH G. BROWN, Special Assistant 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

{*501} SUTIN, Judge.

{1} Jones was convicted of robbery on July 6, 1971. Section 40A-16-2, N.M.S.A. 1953 (2nd Repl. Vol. 6). He was to serve a term of not less than two years nor more than ten years. On March 24, 1972, Jones filed a motion for relief under Rule 93 [§ 21-1-1(93), N.M.S.A. 1953 (Repl. Vol. 4)]. The trial court denied the motion without hearing because the petition set forth certain grounds for relief being the same grounds raised and disposed of on direct appeal of the conviction. State v. Jones, 83 N.M. 600, 495 P.2d 380 (Ct. App. 1972).

{2} The only point raised which was not disposed of on direct appeal was the denial of defendant's motion for lineup. Absence of a lineup is not a basis for post conviction relief. *Hernandez v. State*, 81 N.M. 634, 471 P.2d 204 (Ct. App. 1970).

{3} Post conviction proceedings are not a substitute for an appeal as a means of correcting errors occurring during the course of trial, even though the errors relate to constitutional rights. *State v. Garcia*, 80 N.M. 21, 450 P.2d 621 (1969). Neither is Jones entitled to a successive determination on the merits of issues previously adjudicated. *State v. Ortega*, 81 N.M. 337, 466 P.2d 903 (Ct. App. 1970).

{4} The order of the trial court is affirmed.

{5} IT IS SO ORDERED.

WE CONCUR:

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