

STATE V. BERRY, 1974-NMCA-007, 86 N.M. 137, 520 P.2d 557 (Ct. App. 1974)

**STATE of New Mexico, Plaintiff-Appellee,
vs.
Lester BERRY, aka Lester Jones, Defendant-Appellant.**

No. 1191

COURT OF APPEALS OF NEW MEXICO

1974-NMCA-007, 86 N.M. 137, 520 P.2d 557

January 24, 1974, Certification to the Supreme Court

COUNSEL

Ray Tabet, Albuquerque, for defendant-appellant.

David L. Norvell, Atty. Gen., Jane E. Pendleton, Asst. Atty. Gen., Santa Fe, for plaintiff-appellee.

JUDGES

HERNANDEZ, J., wrote the opinion. SUTIN and LOPEZ, JJ., concur.

AUTHOR: HERNANDEZ

OPINION

HERNANDEZ, Judge. CERTIFICATION TO THE SUPREME COURT

{1} Defendant's appeal from his conviction of and sentence for an unlawful sale of heroin raises an issue as to the correct sentence for the commission of that crime.

{2} In the case of State of New Mexico v. Anthony Herrera, 520 P.2d 554 (Ct. App.), decided January 23, 1974, Judge Hendley and Judge Sutin with Judge Lopez dissenting decided the same issue of sentencing adverse to the opinion of the majority, Judge Hernandez and Judge Lopez, in the instant case.

{*138} {3} On the basis of this difference of opinion between the two panels and pursuant to § 16-7-14(B)(2), N.M.S.A. 1953 (Repl. Vol. 4), this case is certified to the New Mexico Supreme Court for decision.

SUTIN and LOPEZ, JJ., concur.