

**STATE of New Mexico, Plaintiff-Appellee,  
vs.  
Johnny RANDLE, Defendant-Appellant.**

No. 3163

COURT OF APPEALS OF NEW MEXICO

1977-NMCA-101, 91 N.M. 18, 569 P.2d 428

August 30, 1977

**COUNSEL**

Johnny Randle, pro se.

Tony Anaya, Atty. Gen., Santa Fe, for appellee.

**OPINION**

{\*19} ORDER

{1} The defendant was ordered to show cause why his appeal should not be dismissed. The defendant filed a response. The response does not show cause why the appeal should not be dismissed. The response is at variance with the District Court Clerk's record.

{2} The Clerk's record shows the defendant signed a Waiver of Preliminary Hearing and Presentation of Grand Jury which was witnessed by his attorney and the District Judge. The record further shows that defendant was arraigned on an information before the trial court after a Plea Agreement that no habitual charges would be filed and all other forgery or fraud charges under investigation up to May 3, 1977 would not be prosecuted. Judgment, sentence and commitment were filed on June 1, 1977. On July 11, 1977, defendant filed a pro se, notice of appeal.

{3} Defendant's response to the court's Order to show cause states:

"I was never indicted or arraigned I never had a preliminary hearing on the charge of fraud I have a waiver that was sent to me that [says] that I [waived] these. But it [does] not have my signature on it [I'm] sending a [copy] of this waiver to support these facts of my plea bargain on May 3, 1977.

**"Conclusion**

"If the court records supports appellant's allegations of plea bargain of guilty on fraud should be dismissed."

{4} The Clerk of the Court of Appeals is directed to send a copy of the response to the District Attorney and the Attorney General for possible criminal prosecution.

{5} IT IS SO ORDERED.

/s/ **William R. Hendley**

JUDGE

/s/ **Joe W. Wood**

CHIEF JUDGE

/s/ **B. C. Hernandez**

JUDGE