

STATE V. GARCIA, 1977-NMCA-116, 91 N.M. 131, 571 P.2d 123 (Ct. App. 1977)

**STATE of New Mexico, Plaintiff-Appellee,
vs.
Lupe GARCIA, Defendant-Appellant.**

No. 3260

COURT OF APPEALS OF NEW MEXICO

1977-NMCA-116, 91 N.M. 131, 571 P.2d 123

October 18, 1977

COUNSEL

Toney Anaya, Atty. Gen., Santa Fe, for plaintiff-appellee.

Jack Smith, Albuquerque, for defendant-appellant.

JUDGES

WOOD, C.J., wrote the opinion. HENDLEY and LOPEZ, JJ., concur.

AUTHOR: WOOD

OPINION

WOOD, Chief Judge.

{1} The trial court granted defendant's motion to suppress, the State appealed. We reversed, instructing the trial court to deny the motion to suppress. **State v. Garcia**, 90 N.M. 577, 566 P.2d 426 (Ct. App.1977).

{2} After remand, defendant filed another motion to suppress which was denied by the trial court. Defendant is attempting to appeal from that order which was entered on September 27, 1977. In this attempt, he relies on language of the trial court attempting to grant an interlocutory appeal.

{3} There is no final judgment in this case or any matter involving conditions of release. The appeal does not come within the provisions of § 21-10-2.1(A)(1) or (2), N.M.S.A. 1953 (Repl. Vol. 4, Supp. 1975).

{4} The attempted interlocutory appeal involves § 21-10-2.1(A)(3), N.M.S.A. 1953 (Repl. Vol. 4, Supp. 1975) and N.M. Crim. App. 203. Under these provisions, an interlocutory

appeal is with the permission of this Court. The trial court does not have authority to grant an interlocutory appeal.

{5} No application for an interlocutory appeals has been filed with this Court. The docketing statement proceeds on the basis that the appeal is as of right. It is not.

{6} However, we treat the docketing statement as an application for an interlocutory { *132 } appeal. So considering the docketing statement, the application is denied.

{7} IT IS SO ORDERED.

HENDLEY and LOPEZ, JJ., concur.