

BROWN V. STATE, 1978-NMSC-004, 91 N.M. 349, 573 P.2d 1204 (S. Ct. 1978)

CASE HISTORY ALERT: see [12](#) - affects 1955-NMSC-002

**Charles BROWN, Petitioner,
vs.
STATE of New Mexico, Respondent.**

No. 11716

SUPREME COURT OF NEW MEXICO

1978-NMSC-004, 91 N.M. 349, 573 P.2d 1204

January 17, 1978

COUNSEL

William D. Teel, John Walker, Asst. Public Defenders, Albuquerque, for petitioner.

Toney Anaya, Atty. Gen., Paquin M. Terrazas, Asst. Atty. Gen., Santa Fe, for respondent.

JUDGES

FEDERICI, J., wrote the opinion. McMANUS, C.J., and SOSA, EASLEY and PAYNE, JJ., concur.

AUTHOR: FEDERICI

OPINION

{*350} ORDER

FEDERICI, Justice.

{1} The writ of certiorari heretofore granted is quashed as improvidently issued.

{2} The case of **State v. Castrillo**, 90 N.M. 608, 566 P.2d 1146 (1977), upon which petitioner relies, is not applicable to the present case. The first trial in the present case was concluded on November 18, 1976. The **Castrillo** opinion was not filed until July 8, 1977. The **Castrillo** case made it clear that it should not be applied retroactively: "The holding in **Brooks** [**State v. Brooks**, 59 N.M. 130, 279 P.2d 1048 (1955)] will no longer be applicable in New Mexico. **Henceforth** ,..." (Emphasis added.)

{3} Even if the **Castrillo** case were deemed by us to apply, the trial judge in the first trial determined that the jury had not reached a unanimous decision on any of the offenses charged and, therefore, petitioner was not placed in jeopardy.

{4} IT IS SO ORDERED.

McMANUS, C.J., and SOSA, EASLEY and PAYNE, JJ., concur.