

LUCERO V. COX, 1964-NMSC-249, 74 N.M. 658, 397 P.2d 307 (S. Ct. 1964)

**Martin LUCERO, Petitioner,
vs.
Harold A. COX, Warden of the New Mexico State Penitentiary,
Respondent**

No. 7748

SUPREME COURT OF NEW MEXICO

1964-NMSC-249, 74 N.M. 658, 397 P.2d 307

December 07, 1964

Original habeas corpus proceeding.

Motion for Rehearing Denied December 7, 1964

COUNSEL

Edward T. Johnson, Santa Fe, for petitioner.

Earl E. Hartley, Atty. Gen., Harry S. Connelly, Jr., Sp. Asst. Atty. Gen., Santa Fe, for respondent.

AUTHOR: PER CURIAM

OPINION

{*658} OPINION ON MOTION FOR REHEARING

{1} Upon consideration of motion for rehearing the opinion heretofore filed herein is withdrawn and the following substituted therefor:

PER CURIAM:

{2} The issues here presented are generally the same as those discussed in Sneed v. Cox, N. Mex., 397 P.2d 308, decided this date. Of course, the charges against petitioner and the dates and sentence differ. In addition, petitioner here did not raise any issue in the district court concerning the legality of his sentence; nevertheless, the sentence was held to be erroneous and petitioner was returned to Chaves County to be resentenced.

{3} The differences in the facts here present and those passed on in Sneed v. Cox, supra, are not material. The discussion in that opinion is fully applicable here.

{4} The writ should therefore be discharged and petitioner remanded to the custody of respondent to serve the legal sentence imposed on the 6th day of July, 1964, but effective as of the 19th day of April, 1962, the date of the original sentence.

{5} It is so ordered.