

**MILLER V. COX, 1965-NMSC-031, 75 N.M. 65, 400 P.2d 480 (S. Ct. 1965)**

**JOSEPH ALVIN MILLER, Petitioner,  
vs.  
HAROLD A. COX, Warden of the New Mexico State Penitentiary,  
Respondent**

No. 7837

SUPREME COURT OF NEW MEXICO

1965-NMSC-031, 75 N.M. 65, 400 P.2d 480

March 22, 1965

Original Habeas Corpus Proceeding

**COUNSEL**

{\*66} GEORGE A. GRAHAM, JR., Santa Fe, New Mexico, Attorney for Petitioner.

BOSTON E. WITT, Attorney General, HARRY S. CONNELLY, JR., Special Assistant Attorney General, Santa Fe, New Mexico, Attorneys for Respondent.

**JUDGES**

WE CONCUR:

David W. Carmody, C.J., David Chavez, Jr., J., J. C. Compton, J.

**AUTHOR:** PER CURIAM

**OPINION**

PER CURIAM.

{1} Petitioner seeks his discharge from the custody of the Warden of the New Mexico State Penitentiary, on exactly the same grounds as were urged in French v. Cox, 1964, 74 N.M. 593, 396 P.2d 423.

{2} We reapprove what was said therein, and find that petitioner with the advice of able court-appointed counsel, intelligently, competently and understandingly entered guilty pleas to two separate charges of second degree murder; that petitioner was in nowise prejudiced because of the failure to appoint counsel at and prior to the preliminary

examination, and that such failure does not require vacating the pleas of guilty entered in the district court.

{3} However, as in French, supra, the petitioner was never sentenced following the acceptance of his guilty pleas in the two murder cases, but was sentenced under the Habitual Criminal Act to a charge contained in an information in Cause No. 2532, Luna County. This sentence, as stated in French, supra, was void. It follows that the commitment under which petitioner is now serving is of no validity, but, inasmuch as petitioner has been legally convicted in the two murder cases (Numbers 2530 and 2531, Luna County) and no legal judgment has been rendered thereon, he should be remanded in order that valid sentences may be pronounced.

{4} Petitioner should be remanded to the Sheriff of Luna County, to be held by him to await the further action of the district court for the imposition of sentences in Causes Numbered 2530 and 2531. IT IS SO ORDERED.

WE CONCUR:

David W. Carmody, C.J., David Chavez, Jr., J., J. C. Compton, J.