

**STATE V. BREWER, 1967-NMSC-105, 77 N.M. 763, 427 P.2d 272 (S. Ct. 1967)**

**STATE OF NEW MEXICO, Plaintiff-Appellee**  
**vs.**  
**JESSE R. BREWER, Defendant-Appellant**

No. 8184

SUPREME COURT OF NEW MEXICO

1967-NMSC-105, 77 N.M. 763, 427 P.2d 272

May 08, 1967

Appeal from the District Court of Quay County, Gallegos, Judge

**COUNSEL**

BOSTON E. WITT, Attorney General, GARY O. O'DOWD, Assistant Attorney General, Santa Fe, New Mexico, Attorneys for Plaintiff-Appellee.

JOSEPH A. ROBERTS, Santa Fe, New Mexico, Attorney for Defendant-Appellant.

**JUDGES**

HENSLEY, Jr., Chief Judge, wrote the opinion.

WE CONCUR:

David Chavez, Jr., C.J., M. E. Noble, J.

**AUTHOR: HENSLEY**

**OPINION**

HENSLEY, Jr., Chief Judge, Court of Appeals.

{1} In March, 1966, Jesse R. Brewer filed a motion permitted under § 21-1-1(93), N.M.S.A. 1953, to vacate the judgment and sentence previously imposed in the district court at Tucumcari. After a hearing the sentencing court entered an order denying the motion. This appeal followed.

{2} The appellant seeks a reversal of the order of the lower court on the ground that the appellant had not been fully advised of the legal effect of his prior plea of guilty in {\*764} the court of the committing magistrate. The question presented involves neither

jurisdiction nor fundamental error. The objection was not included in the motion presented to the sentencing court and it is now sought to be raised for the first time. The many decisions touching this procedure need not be listed here. The following references will suffice: § 21-2-1(20) (1), N.M.S.A. 1953; Batchelor v. Charley, 74 N.M. 717, 398 P.2d 49. No ruling on the point having been invoked in the sentencing court, none will be made here.

{3} The order appealed from will be affirmed.

{4} IT IS SO ORDERED.

WE CONCUR:

David Chavez, Jr., C.J., M. E. Noble, J.