

STATE OF CAL. V. CLEMENTS, 1972-NMSC-035, 83 N.M. 764, 497 P.2d 975 (S. Ct. 1972)

**STATE OF CALIFORNIA, Plaintiff-Appellee,
vs.
GEORGE W. CLEMENTS, Defendant-Appellant**

No. 9345

SUPREME COURT OF NEW MEXICO

1972-NMSC-035, 83 N.M. 764, 497 P.2d 975

May 26, 1972

Appeal from the District Court of Eddy County, Neal, Judge

COUNSEL

DAVID L. NORVELL, Attorney General, WINSTON ROBERTS-HOHL, Asst. Atty. Gen., Santa Fe, New Mexico, Attorneys for Appellee.

JAMES L. DOW, Carlsbad, New Mexico, Attorney for Appellant.

JUDGES

OMAN, Justice, wrote the opinion.

WE CONCUR:

J. C. Compton, C.J., John B. McManus, Jr., J.

AUTHOR: OMAN

OPINION

OMAN, Justice.

{1} This cause is before us on an attempt by defendant to appeal from an order of the district court denying his Petition for Writ of Habeas Corpus. Subsequent to the filing of the brief in chief in this court, the parties entered into and filed a written stipulation that the brief in chief could be considered by us as a petition to this court for a writ of habeas corpus. This stipulation was denied, and the case subsequently came on for hearing on the purported appeal.

{2} Apparently the effort, to have us consider the appeal as a petition for writ of habeas corpus, was prompted by a realization of the parties that petitioner has no right of appeal to this court from the denial by the district court of his petition for writ of habeas corpus. State v. Sisk, 79 N.M. 167, 441 P.2d 207 (1968); In re Forest, 45 N.M. 204, 113 P.2d 582 (1941); Supreme Court Rule 5(2) [§ 21-2-1(5)(2), N.M.S.A. 1953 (Repl. Vol. 4, 1970)].

{3} The appeal should be dismissed.

{4} IT IS SO ORDERED.

WE CONCUR:

J. C. Compton, C.J., John B. McManus, Jr., J.