

**STATE V. GARCIA, 1972-NMSC-075, 84 N.M. 342, 503 P.2d 322 (S. Ct. 1972)**

**STATE OF NEW MEXICO, Plaintiff-Appellee,  
vs.  
BOBBY GENE GARCIA, Defendant-Appellant.**

No. 9485

SUPREME COURT OF NEW MEXICO

1972-NMSC-075, 84 N.M. 342, 503 P.2d 322

November 24, 1972

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

**COUNSEL**

DAVID L. NORVELL, Attorney General, THOMAS PATRICK WHELAN, JR., Assistant Attorney General, Santa Fe, New Mexico, Attorneys for Appellee.

STANLEY F. FROST, Tucumcari, New Mexico, Attorney for Appellant.

**JUDGES**

McMANUS, Justice, wrote the opinion.

WE CONCUR:

J. C. Compton, C.J., Samuel Z. Montoya, J.

**AUTHOR: MCMANUS**

**OPINION**

McMANUS, Justice.

{1} In State of New Mexico v. Bobby Gene Garcia, Cause No. 3759, Quay County (1967), the appellant was convicted of murder and sentenced to life imprisonment. Thereafter, in State of New Mexico v. Bobby Gene Garcia, Cause No. 3758, Quay County (1968), the appellant was convicted of a second murder and was eventually sentenced to life imprisonment for this crime also. It was the sentence imposed in cause No. 3758 which gave rise to this appeal.

{2} The trial court entered a judgment and sentence containing two paragraphs which appeared contradictory. The first was:

"IT IS FURTHER ORDERED BY THE COURT that the sentence now pronounced in this case on the defendant, Bobby Gene Garcia, shall commence on November 9, 1966, the day that the defendant was apprehended and placed in custody in connection with this case \* \* \*."

If the court actually intended that the sentence begin to run on November 9, 1966, then it would have run concurrently with the one imposed in cause No. 3759. However, the second paragraph says:

"IT IS FURTHER ORDERED BY THE COURT that this sentence and the sentence imposed in case number 3759 \* \* \* will be served consecutively by the defendant."

{3} Pursuant to § 21-1-1(93), N.M.S.A. 1953, the appellant moved that the judgment and sentence be revised by substituting for the word "consecutively" the word "concurrently." After a hearing provided by § 21-1-1(93)(b), supra, the trial court resolved the apparent contradiction by interpreting the first paragraph as having been intended only for the purpose of giving the appellant credit for time already served. These were the court's words:

"To clarify the record, the Judgment and Sentence entered \* \* \* is intended to read that when the defendant shall have completed serving the sentence in cause No. 3759 \* \* \* of if for any reason the defendant is paroled or discharged {343} from the State Penitentiary of New Mexico in cause No. 3759 and the defendant commences serving the sentence in cause No. 3758 \* \* \* the defendant shall be given credit on the sentence in case number 3758 for the period from November 9, 1966 to August 6, 1969 \* \* \*."

{4} Now, the appellant seeks to appeal from that interpretation, claiming as the basis for his appeal the provisions of § 21-1-1(93), supra. However, he has not demonstrated in any way that the sentence, as interpreted, violates any statute or is contrary to any decision of this court. Absent such showing, the judgment and sentence and the court's clarification thereof must be affirmed.

{5} IT IS SO ORDERED.

WE CONCUR:

J. C. Compton, C.J., Samuel Z. Montoya, J.