

ROSS V. BOSTICK, 118 N.M. 311, 875 P.2d 383 (S. Ct. 1994)

**RUSSELL ROSS, Petitioner,
vs.
FORREST BOSTICK, Lea County Jail Administrator, Respondent.**

No. 21,770

SUPREME COURT OF NEW MEXICO

118 N.M. 311, 875 P.2d 383

April 19, 1994, Decided

OPINION

ORDER

WHEREAS, this matter came on for consideration by the Court upon a petition for writ of certiorari pursuant to SCRA 1986, 12-501, and the Court having considered said petition and being sufficiently advised, granted the petition and entered its writ of certiorari to the Fifth Judicial District Court on December 30, 1993; and

WHEREAS, the cause having been submitted to the Court on the April 4, 1994, calendar on the briefs; and

WHEREAS, the Court has found that the record in this matter is silent as to whether either of the two sentences imposed by the magistrate were to run consecutive to the other; and

WHEREAS, in the absence of statute, under common law, unless a court specifically orders two or more sentences to be served consecutively, the sentences shall be served concurrently, **State vs. Padilla**, 85 N.M. 140, 142-43, 509 P.2d 1335 (1973); **State vs. Mayberry**, 97 N.M. 760, 763, 643 P.2d 629 (Ct. App. 1982); **Deats vs. State**, 84 N.M. 405, 406-07, 503 P.2d 1183 (Ct. App. 1972); and

WHEREAS, it therefore appears that the magistrate imposed two 364-day sentences which are to be served concurrently with each other and that there is not basis for this Court to act in this matter.

NOW, THEREFORE, IT IS ORDERED that writ of certiorari issued on December 30, 1993, hereby is QUASHED, and the record in cause numbered CV 93-367 FR hereby is returned to the Fifth Judicial District Court Clerk.