STATE V. RICKARD, 1994-NMSC-111, 118 N.M. 586, 884 P.2d 477 (S. Ct. 1994)
CASE HISTORY ALERT: see ¶1 - affects 1994-NMCA-083

STATE OF NEW MEXICO, Plaintiff-Respondent,
vs.
DONNIE RICKARD, CHARLENE JONES, a/k/a CHARLENE FRAZIER, PATRICIA PRICE and BONNIE RAY WRIGHTER, Defendants-Petitioners.

Nos. 22,250, 22,251, 22,252, 22,253 (Consolidated)

SUPREME COURT OF NEW MEXICO

1994-NMSC-111, 118 N.M. 586, 884 P.2d 477

October 20, 1994, Filed

ORIGINAL PROCEEDING ON CERTIORARI. Patrick J. Francoeur, Fred T. Hensley, and David W. Bonem, District Judges

COUNSEL

Sammy J. Quintana, Chief Public Defender, Rita LaLumia, Christopher Bulman, Assistant Appellate Defenders, Santa Fe, NM, for Petitioners.

Hon. Tom Udall, Attorney General, Ann M. Harvey, Anthony Tupler, William McEuen, Margaret McLean, Assistant Attorneys General, Santa Fe, NM, for Respondents.

JUDGES

MONTGOMERY, RANSOM, FRANCHINI

AUTHOR: MONTGOMERY

OPINION

*{*586}* **OPINION**

MONTGOMERY, Justice.

{1} We issued writs of certiorari to the New Mexico Court of Appeals on the petitions of Donnie Rickard, Charlene Jones, a/k/a Charlene Frazier, Patricia Price, and Bonnie Ray Wrighter, to review an opinion of that Court affirming the convictions of the four petitioners for possession of a controlled substance based on evidence of cocaine in their urine. See State v. **Rickard,** 118 N.M. 312, 881 P.2d 57 (1994). On our own

motion we consolidate these four cases for decision and now affirm in part and reverse in part.

{2} In its opinion below the Court of Appeals rejected the petitioners' claims that their convictions were not supported by sufficient evidence, holding that each petitioner had entered a plea of guilty or nolo contendere and that such a plea waived any challenge to the sufficiency of the evidence. Each petitioner's plea, however, was conditional and reserved for appellate review his or her position that the mere presence of cocaine or its metabolites in a defendant's urine is not sufficient evidence on which to base a conviction. The Court of Appeals upheld this position as to two (other) defendants in **State v. McCoy,** 116 N.M. 491, 497-98, 864 P.2d 307, 313-14 (Ct. App. 1993), but, as just noted, ruled as to the four remaining defendants in that case that their guilty pleas waived their challenges to the sufficiency of the evidence **id.** 116 N.M. 491 at 498-500, 864 P.2d at 313-15. We recently reversed this latter ruling in **State v. Hodge,** 118 N.M. 410, 882 P.2d 1 (1994). In **Hodge** we approved use of conditional plea agreements and held that each defendant in that case had conditioned his or her plea on *{*587}* appellate review of the question whether the presence of cocaine in a urine sample was, by itself, sufficient evidence of possession of the drug to warrant conviction." **Id.** at 417, 882 P.2d at 7.

{3} The records in this case show that each of the petitioners conditioned his or her plea on the right to appeal the same issue as was addressed in **Hodge.** Therefore, based on **Hodge,** we reverse the Court of Appeals' decision as to three of the present defendants--Rickard, Price, and Wrighter--and remand their cases to the district courts in which they arose with instructions to vacate the convictions of possession of a controlled substance.

{4} Jones's case, however, presents different circumstances requiring that her conviction be affirmed. She stipulated to certain facts for purposes of appeal, including the fact that subsequent to her arrest for parole violation, based on the positive results for cocaine in her urine, [she] made admissions to [her supervising parole officer], to the effect that she had knowingly consumed cocaine prior to giving the urine specimen." Her admission constitutes corroborating evidence that she had the intent to possess the drug. **See McCoy,** 116 N.M. at 496-97, 864 P.2d at 312-13. That evidence, combined with the circumstantial evidence of possession provided by the positive drug test, was sufficient to support her conviction. **See id.**

{5} Jones argues that this Court should review her contention that her trial counsel was ineffective for failing to move to suppress her admission to her parole officer based on the officer's alleged failure to give a **Miranda** warning. However, we see no reason to disturb--and we therefore affirm--the Court of Appeals' holding that the record is inadequate for review of this issue and that the proper avenue for relief is a postconviction proceeding in which an adequate record can be developed. **See Rickard,** 118 N.M. at 317, 881 P.2d at 62.

{6} The decision of the Court of Appeals is affirmed in part and reversed in part, and the cases are remanded to the respective trial courts for further proceedings consistent with this opinion.

{7} IT IS SO ORDERED.

SETH D. MONTGOMERY, Justice

WE CONCUR:

RICHARD E. RANSOM, Justice

GENE E. FRANCHINI, Justice