

Opinion No. 60-125

June 27, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Emilio Naranjo Administrator, Driver Services Department Motor Vehicle Division P. O. Drawer D Santa Fe, New Mexico

QUESTION

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On December 18, 1959, a person was convicted of DWI and fined \$ 100.00 plus costs in a justice of the peace court. A court abstract of the conviction was received on January 6, 1960 and an order revoking the person's license was issued by the Driver Services Department. On May 9, 1960, the Department received a corrected abstract from the court changing the charge to Reckless Driving. Does a justice of the peace court have the power to change, alter or set aside its judgments or convictions?

CONCLUSION

No.

OPINION

{*500} ANALYSIS

At the outset, it should be pointed out that justice of the peace courts were unknown at the common law and, therefore, they have only the authority and jurisdiction granted to them by the Constitution and Statutes of this State. I have examined the Constitution and statutes relating to these courts and have been unable to find any authority whatsoever granting to justice of the peace courts the power to change, alter or set aside their judgments or convictions. There is support in the case law of this State for this proposition. See **State v. Bolton**, 53 N.M. 256, where the Court said:

"In this state a justice of peace is without power to set aside his judgments or grant a new trial. *Pickering v. Palmer*, 18 N.M. 473, 138 Pac. 198, 50 LRA, NS, 1055."

While this case dealt with civil matters, we are of the opinion that it applies with equal force to criminal cases.

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Finding no constitutional or statutory authority and on the basis of the **Bolton** case, supra, we are of the opinion that a justice of the peace cannot alter, change or set aside his judgments or convictions as set out in the facts of your question.

By: Boston E. Witt

Assistant Attorney General