

STATE V. PHILLIPS, 1967-NMCA-016, 78 N.M. 405, 432 P.2d 116 (Ct. App. 1967)

STATE OF NEW MEXICO, Plaintiff-Appellant
vs.
GARY GRANT PHILLIPS, Defendant-Appellee

No. 37

COURT OF APPEALS OF NEW MEXICO

1967-NMCA-016, 78 N.M. 405, 432 P.2d 116

September 15, 1967

Appeal from the District Court of Lea County, Nash, Judge.

COUNSEL

BOSTON E. WITT, Attorney General, DONALD W. MILLER, Assistant Attorney General, Attorneys for Appellant.

TOM W. NEAL, Hobbs, New Mexico, Attorney for Appellee.

JUDGES

WOOD, Judge, wrote the opinion.

WE CONCUR:

E. T. Hensley, Jr., C.J., Waldo Spiess, J.

AUTHOR: WOOD

OPINION

WOOD, Judge.

{1} The trial court quashed the criminal information. The State appeals under § 21-2-1(5)(4), N.M.S.A. 1953. Since the appeal must be dismissed, we do not reach the merits.

{2} On August 5th, after hearing argument, the trial court announced that the information would be quashed.

{3} On August 18th the State filed a notice of appeal. The notice states that an appeal is taken "from the order quashing Information filed in this cause on August 18."

{4} There is no order of August 18th which quashes the information. Such an order was filed on August 26th.

{5} Under § 21-2-1(5)(5), N.M.S.A. 1953, the notice of appeal "shall designate the judgment, order or part thereof appealed from." The State's notice of appeal is from a non-existent order; the notice is a nullity. The notice of appeal cannot be taken as an appeal from the order of August 26th since this order was entered eight days after the notice of appeal was filed. *Bouldin v. Bruce M. Bernard, Inc.*, 78 N.M. 188, 429 P.2d 647 (1967).

{6} Since no appeal has been taken from the order quashing the information, this appeal is dismissed.

{7} IT IS SO ORDERED.

WE CONCUR:

E. T. Hensley, Jr., C.J., Waldo Spiess, J.