

**STATE V. CONNERS, 1969-NMCA-096, 80 N.M. 662, 459 P.2d 461 (Ct. App. 1969)**

**STATE OF NEW MEXICO, Plaintiff-Appellant,  
vs.  
TOM CONNERS, Defendant-Appellee**

No. 335

COURT OF APPEALS OF NEW MEXICO

1969-NMCA-096, 80 N.M. 662, 459 P.2d 461

September 26, 1969

Appeal from the District Court of Eddy County, Neal, Judge.

**COUNSEL**

JAMES A. MALONEY, Attorney General, RAY SHOLLENBARGER, Asst. Atty. Gen.,  
Santa Fe, New Mexico, Attorneys for Appellant.

WILLIAM M. SIEGENTHALER, Artesia, New Mexico, Attorney for Appellee.

**JUDGES**

WOOD, Judge, wrote the opinion.

WE CONCUR:

LaFel E. Oman, J., William R. Hendley, J.

**AUTHOR: WOOD**

**OPINION**

{\*663} WOOD, Judge.

{1} Defendant was charged with issuing two worthless checks totaling in excess of \$25.00. The trial court held that the punishment provided by § 40-49-5(B), N.M.S.A. 1953 (Rep. Vol. 6, Supp. 1969) was unconstitutionally vague and quashed the information. The State appeals.

{2} State v. Ferris, (N.M.Ct. App.) 159 P.2d 462, decided September 19, 1969, held that the words, "total amount of the checks," appearing in § 40-49-5, N.M.S.A. 1953 (Repl. Vol. 6, Supp. 1969) were unconstitutionally vague. It also held that the offense of

issuing worthless checks was charged without reference to penalty provisions, that the unconstitutional "totaling" provision could be severed and a person could be punished under the remaining provisions of § 40-49-5, supra.

{3} State v. Ferris, supra, is applicable. The trial court correctly held that defendant could not be punished under § 40-49-5(B), supra, by "totaling" the two checks. However, the trial court erred in quashing the information. Defendant can be punished under the remaining provisions of § 40-49-5, supra, for each worthless check that he has issued.

{4} The order quashing the information is reversed. The cause is remanded with directions to reinstate the information and proceed consistently with this opinion.

{5} IT IS SO ORDERED.

WE CONCUR:

LaFel E. Oman, J., William R. Hendley, J.