

**STATE V. THORN, 1971-NMCA-023, 82 N.M. 431, 483 P.2d 312 (Ct. App. 1971)**

**STATE OF NEW MEXICO, Plaintiff-Appellee,  
vs.  
DOUGLAS R. THORN, Defendant-Appellant**

No. 547

COURT OF APPEALS OF NEW MEXICO

1971-NMCA-023, 82 N.M. 431, 483 P.2d 312

March 12, 1971

Appeal from the District Court of Roosevelt County, Blythe, Judge

**COUNSEL**

JAMES A. MALONEY, Attorney General, THOMAS L. DUNIGAN, Ass't Atty. Gen.,  
Santa Fe, New Mexico, Attorneys for Appellee.

FRED T. HENSLEY, Portales, New Mexico, Attorney for Appellant.

**JUDGES**

SUTIN, Judge, wrote the opinion.

WE CONCUR:

Waldo Spiess, C.J., Joe W. Wood, J.

**AUTHOR: SUTIN**

**OPINION**

SUTIN, Judge.

{1} Thorn pleaded guilty to possession of marijuana under § 54-7-13, N.M.S.A. 1953 (Repl. Vol. 8, pt. 2). This is the general {432} narcotics law which contains a mandatory sentence provision. Under State v. Riley, 82 N.M. 235, 478 P.2d 563 (1970), and State v. Rendleman (Ct. App.) 82 N.M. 346, 481 P.2d 708, decided February 12, 1971, the conviction and sentence is reversed.

{2} At the hearings, in connection with the above charge, the trial court expressed the point of view that the state had the option of proceeding under the general statute, or

the special statute which is § 54-5-14, N.M.S.A. 1953 (Repl. Vol. 8, pt. 2). Thorn's appeal contends it was error to charge him under the general statute. We agree.

{3} The rule fixed in **Riley** applies to the Thorn case.

{4} The judgment and sentence of Thorn in the trial court is reversed. The cause is remanded with instructions to vacate the judgment and sentence and dismiss the charge under which Thorn pleaded guilty.

{5} IT IS SO ORDERED.

WE CONCUR:

Waldo Spiess, C.J., Joe W. Wood, J.