

STATE V. JORDAN, 1971-NMCA-054, 85 N.M. 125, 509 P.2d 892 (Ct. App. 1971)

**STATE OF NEW MEXICO, Plaintiff-Appellee
vs.
RICHARD EUGENE JORDAN, Defendant-Appellant**

No. 1049

COURT OF APPEALS OF NEW MEXICO

1971-NMCA-054, 85 N.M. 125, 509 P.2d 892

April 13, 1971

Appeal from the District Court of San Juan County, Musgrove, Judge

COUNSEL

FRANK P. DICKSON, LARRY W. BURCH, BRANCH, DICKSON & DUBOIS, P.A.,
Albuquerque, New Mexico, Attorneys for Appellant.

DAVID L. NORVELL, Attorney General, JANE E. PENDLETON, Ass't. Atty. Gen., Santa
Fe, New Mexico, Attorneys for Appellee.

JUDGES

WOOD, Chief Judge, wrote the opinion.

WE CONCUR:

Lewis R. Sutin, J., Ramon Lopez, J.

AUTHOR: WOOD

OPINION

WOOD, Chief Justice. OPINION

{1} Defendant pled guilty to burglary. Section 40A-16-3, N.M.S.A. 1953 (2nd Repl. Vol. 6). Appealing, he attacks the procedure followed by the trial court in accepting the plea. Because of this asserted defective procedure he claims his plea is void. The appeal is frivolous.

{2} Defendant was indicted January 19, 1972. He entered a plea of not guilty on January 24, 1972. On April 27, 1972, while represented by counsel, he changed his

plea to guilty. After questioning defendant, the trial court accepted the guilty plea. On April 27, 1972, the trial court sentenced defendant to the penitentiary for sixty days for examination and evaluation. At the conclusion of the sixty day period he was returned to San Juan County. On July 5, 1972, the statutory sentence for burglary was imposed.

{3} On July 14, 1972, defendant, by motion, attacked the voluntariness of his guilty plea. An evidentiary hearing was held on July 19, 1972. After this hearing the motion was denied.

{4} This appeal does not involve the post-conviction proceedings, that is, the proceedings which occurred subsequent to July 5, 1972. Defendant does not claim, in this direct appeal from the sentence imposed July 5, 1972, that his guilty plea was involuntary. His only claim is that when his guilty plea was accepted the trial court's procedure was defective.

{5} No such issue was raised in the trial court; it cannot be raised here for the first time. *State v. Martinez*, (Ct. App.), 84 N.M. 766, 508 P.2d 36, decided March 9, 1973; *State v. Colvin*, 82 N.M. 287, 480 P.2d 401 (Ct. App. 1971); *State v. Tafoya*, 81 N.M. 686, 472 P.2d 651 (Ct. App. 1970).

{6} In *Boykin v. Alabama*, 395 U.S. 238, 23 L. Ed. 2d 274, 89 S. Ct. 1709 (1969) the issue was the voluntariness of a plea. In deciding {126} that question, consideration was given to the procedures followed in accepting the plea. Here, there is no issue as to voluntariness. Further, in questioning defendant before accepting the guilty plea, the record affirmatively shows the trial court went beyond the requirements of *Boykin v. Alabama*, supra. There is no basis in the record for the procedural issue defendant seeks to raise.

{7} The judgment and sentence is affirmed.

{8} IT IS SO ORDERED.

WE CONCUR:

Lewis r. Sutin, J., Ramon Lopez, J.