

**STATE OF NEW MEXICO, Appellee,
vs.
ANDREW MICHAEL BOGDAN, Appellant**

No. 741

COURT OF APPEALS OF NEW MEXICO

1971-NMCA-146, 83 N.M. 250, 490 P.2d 967

October 15, 1971

Appeal from the District Court of Luna County, Hodges, Judge

Petition for Writ of Certiorari Denied November 17, 1971

COUNSEL

DAVID L. NORVELL, Attorney General, RONALD VAN AMBERG, Assistant Attorney General, Santa Fe, New Mexico, Attorneys for Appellee.

PAUL F. SHERMAN, SHERMAN and SHERMAN, Deming, New Mexico, Attorneys for Appellant.

JUDGES

COWAN, Judge, wrote the opinion.

WE CONCUR:

Joe W. Wood, C.J., Lewis R. Sutin, J.

AUTHOR: COWAN

OPINION

{*251} COWAN, Judge.

{1} Defendant was convicted and sentenced on two counts of aggravated battery contrary to § 40A-3-5, N.M.S.A. 1953 (Repl. Vol. 6). No appeal was taken from this judgment and sentence. Thereafter, under Rule 93 [21-1-1(93), N.M.S.A. 1953 (Repl. Vol. 41)], defendant filed a Motion to Vacate Judgment and Sentence and an Addendum to Motion for Vacatament (sic) of Judgment and Sentence. These motions

were heard by the trial court, evidence was introduced, and the court filed findings of fact and conclusions of law. See *State v. Gorton*, 79 N.M. 775, 449 P.2d 791 (Ct. App. 1969). The court then entered its order overruling such motions and from this order the defendant appeals to this court.

{2} The defendant was represented by court-appointed counsel both at his trial and at the hearing on his motions. He also participated in the various proceedings, representing himself.

{3} Defendant claims error under 14 points. All claimed errors concern the alleged denial or violation of defendant's constitutional or statutory rights. None of the claimed errors have merit. Substantial evidence supports the trial court's findings. We find no reversible error.

{4} The defendant has also filed with this court an instrument styled "Motion to Suppress and Exclude Document" by which he complains that his brief in chief "contains inconsistent facts and contentions therein are not properly defended." He asks leave to amend and attaches certain instruments. These instruments are already a part of the record and were duly considered by this court. The court has also considered the motion and concludes it is not well taken.

{5} Defendant's motion to Suppress and Exclude Document is denied.

{6} The order of the trial court denying the motions is affirmed.

{7} IT IS SO ORDERED.

WE CONCUR:

Joe W. Wood, C.J., Lewis R. Sutin, J.