

STATE V. RANNE, 1971-NMCA-151, 83 N.M. 241, 490 P.2d 683 (Ct. App. 1971)

**STATE OF NEW MEXICO, Plaintiff-Appellee
vs.
ROGER RANNE, Defendant-Appellant**

No. 692

COURT OF APPEALS OF NEW MEXICO

1971-NMCA-151, 83 N.M. 241, 490 P.2d 683

October 29, 1971

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

COUNSEL

DAVID L. NORVELL, Attorney General, C. EMERY CUDDY, JR., Assistant Attorney General, Santa Fe, New Mexico, Attorneys for Appellee.

HARVEY C. MARKLEY, Lovington, New Mexico, Attorney for Appellant.

JUDGES

HENDLEY, Judge, wrote the opinion.

WE CONCUR:

Joe W. Wood, C.J., Ray C. Cowan, J.

AUTHOR: HENDLEY

OPINION

HENDLEY, Judge.

{1} Defendant's conviction of robbery, aggravated battery and aggravated burglary was affirmed on appeal. State v. Ranne, 80 N.M. 188, 453 P.2d 209 (Ct. App. 1969). He is now before this court on appeal from an order denying, without hearing, his motion for post-conviction relief filed pursuant to Rule 93 [§ 21-1-1(93), N.M.S.A. 1953 (Repl. Vol. 1970)].

{2} Defendant's first point on appeal is that there was a misunderstanding between the court and defendant at the time of an alleged "plea bargaining session" which resulted

in prejudice to the defendant. The motion raises no such contention and accordingly cannot be raised for the first time on appeal. Section 21-2-1(20), N.M.S.A. 1953 (Repl. Vol. 1970). Even if this contention was raised it is disposed of by State v. Leyba, 80 N.M. 190, 453 P.2d 211 (Ct. App. 1969).

{3} Defendant's second point of appeal is that the testimony of the State's witness at trial is contradicted by a State's witness who testified at the preliminary hearing but not at trial and that this resulted in prejudice to the defendant. This contention is disposed of by State v. Minns, 81 N.M. 428, 467 P.2d 1000 (Ct. App. 1970).

{4} Affirmed.

{5} IT IS SO ORDERED.

WE CONCUR:

Joe W. Wood, C.J., Ray C. Cowan, J.