

STATE V. WOODS, 1973-NMCA-114, 85 N.M. 452, 513 P.2d 189 (Ct. App. 1973)

**STATE OF NEW MEXICO, Respondent-Appellee
vs.
LEROY WOODS, Petitioner-Appellant**

No. 1225

COURT OF APPEALS OF NEW MEXICO

1973-NMCA-114, 85 N.M. 452, 513 P.2d 189

July 25, 1973

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

COUNSEL

DAVID L. NORVELL, Attorney General, LEE GRIFFIN, Ass't. Atty. Gen., Santa Fe, New Mexico, Attorneys for Appellee.

FRED THARP, JR., Clovis, New Mexico, Attorney for Appellant.

JUDGES

WOOD, Chief Judge, wrote the opinion.

WE CONCUR:

B. C. Hernandez, J., Ramon Lopez, J.

AUTHOR: WOOD

OPINION

WOOD, Chief Judge.

{1} The question is whether Woods has suffered double jeopardy because of a municipal court conviction and a subsequent district court conviction.

{2} Woods' district court conviction for aggravated assault was affirmed. State v. Woods, 82 N.M. 449, 483 P.2d 504 (Ct. App. 1971). The denial of post-conviction relief, with the exception of the double jeopardy issue, was affirmed. Woods v. State, 84 N.M. 248, 501 P.2d 692 (Ct. App. 1972). The post-conviction proceeding was remanded to

the district court for an evidentiary hearing. That evidentiary hearing has been held. The trial court denied relief on the double jeopardy issue; Woods appeals.

{3} In *Woods v. State*, supra, the double jeopardy claim was that Woods had been convicted of "assault" in municipal court and aggravated assault in district court. We said: "* * * If the factual basis for the alleged conviction for assault in municipal court (if in fact there be one), and the factual basis for the aggravated assault conviction differ, then there would be no double jeopardy." [Citations omitted]. Further: "* * * the burden will be on him [Woods] to prove a factual basis showing double jeopardy." [Citation omitted].

{4} Following the evidentiary hearing, the trial court found as a fact that Woods did not sustain his burden of proof. It found "* * * that the proceedings in the Municipal Court of Clovis, New Mexico, were based on events which transpired subsequent to and in a location different from those for which he was convicted in this {453} court of the offense of aggravated assault." The municipal court charges were "carrying a deadly weapon" and "drunkenness."

{5} Woods does not challenge the findings of the trial court. Being unchallenged, the findings are facts before this Court. *State v. Reid*, 79 N.M. 213, 441 P.2d 742 (1968).

{6} On the basis of the unchallenged facts, there was no double jeopardy. *State v. Gonzales*, 84 N.M. 726, 507 P.2d 787 (Ct. App. 1973); *State v. Anaya*, 83 N.M. 672, 495 P.2d 1388 (Ct. App. 1972); *Woods v. State*, supra.

{7} The order denying post-conviction relief is affirmed.

{8} IT IS SO ORDERED.

WE CONCUR:

B. C. Hernandez, J., Ramon Lopez, J.