

**STATE of New Mexico, Plaintiff-Appellee,
vs.
Donald LARAN, Defendant-Appellant.**

No. 2847

COURT OF APPEALS OF NEW MEXICO

1977-NMCA-035, 90 N.M. 295, 562 P.2d 1149

April 01, 1977

COUNSEL

Donaldo A. Martinez, Las Vegas, for defendant-appellant.

Toney Anaya, Atty. Gen., Dennis P. Murphy, Asst. Atty. Gen., Santa Fe, for plaintiff-appellee.

JUDGES

WOOD, C.J., wrote the opinion. HENDLEY and LOPEZ, JJ., concur.

AUTHOR: WOOD

OPINION

ORDER

WOOD, Chief Justice.

{1} Defendant obtained an extension of time to file his docketing statement on February 10, 1977. The docketing statement was filed on that date. On February 11, 1977 the appeal was assigned to the limited calendar.

{2} On March 11, 1977 the State moved to dismiss the appeal, or in the alternative to summarily affirm relying on N.M. Crim. App. 404(b) and 403(a). The motion asserted that defendant had not complied with N.M. Crim. App. 209(a) and (b). These rules pertain to a conference for the purpose of designating the proceedings to be included in the transcript and making satisfactory arrangements for payment of the reporter's transcript. The motion was accompanied by a memorandum of authority. A certificate on both documents recites that a copy was mailed to opposing counsel. Defendant has not responded to the motion.

{3} On March 24, 1977 this Court directed defense counsel to show cause why the appeal should not be dismissed for failure to comply with the Rules of Appellate Procedure for Criminal Cases. Hearing on this {296} order was scheduled for April 1, 1977 at 9:00 A.M. A copy of this order was sent to counsel. There was no appearance for defendant at this hearing.

{4} At trial defendant was represented by private counsel. The docketing statement recites that defendant "will file a motion for free process to meet the cost of the production of the transcript. He is indigent and has no means with which to meet that cost." There is nothing showing that defendant has sought an order for free process.

{5} The showing before this Court is that N.M. Crim. App. 209 has been violated and that no steps have been taken for the preparation of a transcript for use in the appeal. Under N.M. Crim. App. 209 the transcript was due to be filed on April 1, 1977.

{6} In light of the foregoing, the appeal is dismissed for noncompliance with N.M. Crim. App. 209.

{7} IT IS SO ORDERED.

HENDLEY and LOPEZ, JJ., concur.