

MILLER V. COX, 1960-NMSC-108, 67 N.M. 414, 356 P.2d 231 (S. Ct. 1960)

Bruce H. MILLER, Petitioner
vs.
Harold A. COX, Warden, New Mexico State Penitentiary,
Respondent

No. 6797

SUPREME COURT OF NEW MEXICO

1960-NMSC-108, 67 N.M. 414, 356 P.2d 231

October 04, 1960

Original habeas corpus proceeding by prisoner who had been convicted of burglary. The Supreme Court held that where defendant had pleaded guilty to breaking and entering, he could be found guilty of burglary.

AUTHOR: PER CURIAM

OPINION

{*414} {1} The above matter came on for hearing on Petition and supplements for a Writ of Habeas Corpus, Chief Justice COMPTON, Mr. Justice CARMODY and Mr. Justice CHAVEZ sitting. Petitioner had been charged in an information on two counts with the crime of breaking and entering (N.M.S.A., 1953, 40-9-6), and had entered pleas of guilty in open court being represented by counsel. The judgment found that he was guilty of "burglary" on both counts. He was sentenced to imprisonment in the State Penitentiary on each count for a term of one to three years, that prescribed by Sec. 40-9-6, to run consecutively. Petitioner urged that the sentences were void since he pleaded guilty to breaking and entering and the judgment found him guilty of "burglary". The penalty prescribed for burglary (N.M.S.A., 1953, 40-9-1) is three to fifteen years imprisonment.

{2} The original statutes are found in Secs. 9, 10, 11 and 12 of Chapter IV, Laws of the Territory of New Mexico, 1853-4, and are extensions of the common-law definition of the crime of burglary.

{3} We hold that under the New Mexico statutes the unlawful entry of a {*415} building in the nighttime constitutes "burglary", the punishment being dependent upon the degree of the offense. State v. Mares, 61 N.M. 46, 294 P.2d 284; State v. Salazar, 42 N.M. 308, 77 P.2d 633. The Writ is discharged and the petitioner is remanded to the custody of the Warden of the State Penitentiary.