

MOLINAR V. STATE, 1990-NMSC-026, 109 N.M. 536, 787 P.2d 455 (S. Ct. 1990)

**MIKE C. MOLINAR, Petitioner,
vs.
STATE OF NEW MEXICO, Respondent**

No. 18939

SUPREME COURT OF NEW MEXICO

1990-NMSC-026, 109 N.M. 536, 787 P.2d 455

February 27, 1990, Filed

Original Proceeding on Certiorari, Honorable Harvey W. Fort.

Motion for Rehearing Denied March 20, 1990

COUNSEL

Jacquelyn Robins, Chief Public Defender, Peter Rames, Assistant Appellate Defender, Santa Fe, New Mexico, for Petitioner.

Hal Stratton, Attorney General, Gail MacQuesten, Assistant Attorney General, Santa Fe, New Mexico, for Respondent.

AUTHOR: PER CURIAM

OPINION

PER CURIAM.

{1} Petitioner, Mike C. Molinar, has petitioned us for a writ of certiorari, seeking reversal of his conviction in **State v. Molinar**, Ct. App. No. 10,982, November 11, 1989, Apodaca, J., dissenting. We granted his petition, and have issued the writ. Upon review of the case, we find that Molinar was a co-defendant with Terry Callaway in the latter's trial. **See State v. Callaway**, Ct. App. No. 10,966, November 7, 1989, Apodaca, J., dissenting, **reversed, Callaway v. State**, 109 N.M. 416, 785 P.2d 1035 (1990), Baca, J., dissenting. As in **Callaway**, petitioner objected to the trial court's **sua sponte** order of mistrial. We thus conclude that petitioner's second trial was constitutionally invalid, for the same reasons we gave in **Callaway**.

{2} Accordingly, we reverse the court of appeals in No. 10,982, and remand the case to the district court with instructions to discharge petitioner from custody.

{3} IT IS SO ORDERED.

BACA, J., dissents.