

STATE V. NEWMAN, 1926-NMSC-023, 31 N.M. 435, 246 P. 901 (S. Ct. 1926)

**STATE
vs.
NEWMAN**

No. 3163

SUPREME COURT OF NEW MEXICO

1926-NMSC-023, 31 N.M. 435, 246 P. 901

June 08, 1926

Appeal from District Court, Chavez County; Brice, Judge.

W. L. Newman was convicted of the unlawful possession of intoxicating liquor, and he appeals.

SYLLABUS

SYLLABUS BY THE COURT

Where a prosecution is had under an unconstitutional statute, the case will be dismissed in this court and the defendant ordered to be discharged by the lower court.

COUNSEL

Robert C. Dow, Asst. Atty. Gen., for the State.

JUDGES

Parker, C. J. Bickley and Watson, JJ., concur.

AUTHOR: PARKER

OPINION

{*435} {1} OPINION OF THE COURT The Attorney General on behalf of the state has filed a skeleton transcript, together with a motion for the affirmance of the judgment in this case for failure to perfect the appeal. The defendant {*436} was indicted, tried, and convicted for the unlawful possession of intoxicating liquor under the provisions of chapter 118, Laws 1923. We had this chapter under consideration in State v. Armstrong, 31 N.M. 220, 243 P. 333. In that case we held the act to be unconstitutional and void. There is no law, therefore, under which the prosecution in this case can be

sustained. The whole proceeding and sentence must consequently be held to be without force and effect.

{2} It follows that the motion to docket and affirm should be denied, and the cause remanded to the district court with directions to set aside the judgment and sentence, and to discharge the defendant, and it so ordered.