

STATE V. HOOVER, 1963-NMSC-202, 73 N.M. 223, 387 P.2d 330 (S. Ct. 1963)

**STATE of New Mexico, Plaintiff-Appellee,
vs.
Jerry HOOVER, Defendant-Appellant**

No. 7320

SUPREME COURT OF NEW MEXICO

1963-NMSC-202, 73 N.M. 223, 387 P.2d 330

November 25, 1963

Defendant was convicted in the District Court, San Juan County, Samuel Z. Montoya, D.J., of second degree murder and he appealed. The Supreme Court, Noble, J., held that sentence of not less than 25 years nor more than 50 years was erroneous in view of applicable statute providing a penalty of imprisonment for any period of not less than 3 years and defendant was entitled to be resentenced.

COUNSEL

Edwin L. Felter, O. Russell Jones, Santa Fe, for appellant.

Earl E. Hartley, Atty. Gen., Joel M. Carson, Shirley C. Zabel, Asst. Attys. Gen., Santa Fe, for appellee.

JUDGES

Noble, Justice. Compton, C.J., and Carmody, J., concur.

AUTHOR: NOBLE

OPINION

{*223} {1} On May 25, 1962, Jerry Hoover was convicted of second degree murder and sentenced to be confined in the State Penitentiary "for a period of not less than twenty-five nor more than fifty years." This appeal is from the sentence so imposed.

{2} The applicable statute, 40-24-10, N.M.S.A.1953, provided a penalty of imprisonment "for any period of time not less than three [3] years." This has been construed as providing a maximum sentence of life imprisonment. State v. Maestas, 63 N.M. 67, 313 P.2d 337. The indeterminate sentence statute, 41-17-1, N.M.S.A.1953, requires the court to impose a sentence of the minimum and the maximum provided by {*224} law. State v. Romero, N. Mex., 385 P.2d 967.

{3} It follows that the sentence imposed was erroneous. The judgment is reversed and the cause remanded with instructions to vacate the sentence imposed and to resentence the defendant in conformity with this opinion.

{4} It is so ordered.