

SELLERS V. BAKER, 1969-NMSC-024, 80 N.M. 34, 450 P.2d 634 (S. Ct. 1969)

**John Lee SELLERS, Petitioner,
vs.
J. E. BAKER, Warden of the New Mexico State Penitentiary,
Respondent**

No. 8797

SUPREME COURT OF NEW MEXICO

1969-NMSC-024, 80 N.M. 34, 450 P.2d 634

February 27, 1969

OPINION

{*34} Original Habeas Corpus Proceeding

NOBLE, Chief Justice, and MOISE, COMPTON, CARMODY and TACKETT, Justices, concurring.

{1} This cause coming on for hearing upon the Writ of Habeas Corpus heretofore issued by this Court, the Petitioner John Lee Sellers being present and represented by Joseph A. Roberts, an attorney appointed to represent him, and J. E. Baker, Warden of the State Penitentiary, being represented by Hon. Carl B. Dunifon, and Hon. Larry N. Smith, Assistant Attorneys General, and the Court having considered the evidence and heard arguments of counsel, and it appearing to the Court that the Writ of Habeas Corpus should be discharged as improvidently issued under the applicable rules as announced in Ex Parte Dalton, 56 N.M. 407, 244 P.2d 790; State v. Currier, 86 Ariz. 394, 347 P.2d 29; and Ex Parte Powers (Tex.Cr.App.), 391 S.W.2d 413.

{2} Therefore ordered that the Writ of Habeas Corpus heretofore issued in the above entitled cause be and the same is hereby discharged as improvidently issued.