STATE V. THOMPSON, 1969-NMSC-037, 80 N.M. 134, 452 P.2d 468 (S. Ct. 1969)

STATE OF NEW MEXICO, Plaintiff-Appellee,
vs.
OTTO THOMPSON, Defendant-Appellant

No. 8674

SUPREME COURT OF NEW MEXICO

1969-NMSC-037, 80 N.M. 134, 452 P.2d 468

March 31, 1969

APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY, NEAL, Judge

COUNSEL

BOSTON E. WITT, Attorney General, JAMES V. NOBLE, Assistant Attorney General, Santa Fe, New Mexico, Attorneys for Appellee.

HAROLD N. OLIVE, Carlsbad, New Mexico, Attorney for Appellant.

JUDGES

TACKETT, Justice, wrote the opinion.

WE CONCUR:

M. E. Noble, C.J., David W. Carmody, J.

AUTHOR: TACKETT

OPINION

*{*135}* TACKETT, Justice.

{1} Otto Thompson, appellant, was tried before a jury on March 20, 1952, along with Terrell David Watson, and found guilty of first degree murder. They were sentenced to life imprisonment in the New Mexico State Penitentiary. On January 8, 1968, Thompson filed a petition for a writ of habeas corpus in the District Court of Eddy County, alleging that his constitutional rights had been violated. That petition was denied on January 11, 1968, on the ground that the claims of petitioner were not sustained, but were contrary to the record in the case. The trial judge's order in the habeas corpus case carefully and in detail disposed of appellant's claims.

{2} On January 26, 1968, Thompson filed a motion to vacate judgment and sentence, pursuant to Rule 93 § 21-1-1(93), N.M.S.A. 1953 Comp., 1967 Pocket Supp.), alleging substantially the same grounds as contained in the habeas corpus petition.

{3} On February 9, 1968, the trial court entered an order denying the motion, making the following pertinent findings of fact:

"On January 8, 1968, Thompson filed in this Court an application for a Writ of Habeas Corpus. On January 11, 1968, an Order was entered denying the application. The Order entered is on file herein.

"On January 26, 1968, Thompson filed herein a Motion to Vacate the Judgment and sentence. The Motion is based upon substantially the same grounds set forth in the application for a Writ."

The trial court concluded that it was not required by law to entertain successive motions under such circumstances. Rule 93, supra.

{4} Since the findings of fact are not specifically attacked, they are conclusive on appeal. Supreme Court Rule 15(6) (§ 21-2-1(15)(6), N.M.S.A. 1953 Comp.); State v. Simien, 78 N.M. 709, 437 P.2d 708 (1968); Morris v. Merchant, 77 N.M. 411, 423 P.2d 606 (1967); Hindi v. Smith, 73 N.M. 335, 388 P.2d 60 (1963); Hutchison v. Boney, 72 N.M. 194, 382 P.2d 525 (1963); Hinkle v. Schmider, 70 N.M. 349, 373 P.2d 918 (1962); Swallows v. Sierra, 68 N.M. 338, 362 P.2d 391 (1961); Latta v. Harvey, 67 N.M. 72, 352 P.2d 649 (1960); and cases cited therein. We agree that the trial court is not required by law to entertain successive motions. Therefore, the decision of the trial court is affirmed.

{5} IT IS SO ORDERED.

WE CONCUR:

M. E. Noble, C.J., David W. Carmody, J.