

TORRES V. STATE, 1969-NMSC-109, 80 N.M. 511, 458 P.2d 586 (S. Ct. 1969)

**EDWARD RIVERA TORRES, Plaintiff-Appellant,
vs.
STATE OF NEW MEXICO, Defendant-Appellee**

No. 8807

SUPREME COURT OF NEW MEXICO

1969-NMSC-109, 80 N.M. 511, 458 P.2d 586

September 08, 1969

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY, SCARBOROUGH,
Judge

COUNSEL

JOSEPH A. ROBERTS, Santa Fe, New Mexico, Attorney for Appellant.

JAMES A. MALONEY, Attorney General, ROBERT J. LAUGHLIN, Assistant Attorney
General, Santa Fe, New Mexico, Attorneys for Appellee.

JUDGES

COMPTON, Justice, wrote the opinion.

WE CONCUR:

Irwin S. Moise, J., James W. Musgrove, D.J.

AUTHOR: COMPTON

OPINION

{*512} COMPTON, Justice.

{1} This is an appeal from an order denying post conviction relief under Rule 93, § 21-1-1(93), N.M.S.A. 1953 (1967 Supp.), without a hearing.

{2} Following a plea of guilty to murder in the second degree, appellant was sentenced to serve a term in the state penitentiary of not less than three years not more than life. The statutes under which he was sentenced, § 40-24-10, N.M.S.A. 1953, (since

repealed), provides that imprisonment for second degree murder shall be "for any period of time not less than three years."

{3} Appellant here contends that the court committed error in fixing life imprisonment as the maximum penalty, and that we should reconsider *State v. Maestas*, 63 N.M. 67, 313 P.2d 337. The contention must be rejected. The statute was given due consideration in *State v. Maestas*, supra, and we conclude that appellant was properly sentenced.

{4} The order should be affirmed.

{5} IT IS SO ORDERED.

WE CONCUR:

Irwin S. Moise, J., James W. Musgrove, D.J.