

TRUJILLO V. STATE, 1977-NMSC-066, 90 N.M. 666, 568 P.2d 192 (S. Ct. 1977)

**Luciano TRUJILLO, Petitioner,
vs.
STATE of New Mexico, Respondent.**

No. 11466

SUPREME COURT OF NEW MEXICO

1977-NMSC-066, 90 N.M. 666, 568 P.2d 192

August 22, 1977

COUNSEL

Patricia D. Barth, Albuquerque, for petitioner.

Toney Anaya, Atty. Gen., Santa Fe, for respondent.

JUDGES

SOSA, J., wrote the opinion. McMANUS, C.J., and EASLEY, PAYNE and FEDERICI, JJ., concur.

AUTHOR: SOSA

OPINION

{*667} SOSA, Justice.

{1} Defendant Luciano Trujillo was convicted by a jury of various offenses in district court. The Court of Appeals summarily affirmed. We granted certiorari.

{2} On appeal defendant argues, **inter alia**, that the Court of Appeals improperly summarily affirmed his conviction because his memorandum in opposition to summary disposition was untimely filed. The facts indicated that defendant's appeal was assigned to the summary calendar on May 3, 1977. Notice thereof was received on May 5 by defendant's counsel. The memorandum in opposition was mailed from Albuquerque on May 13 (Friday) and filed in the Court of Appeals on Monday, May 16. Defendant argues that in this case N.M.R. Crim. App. 302(b) [§ 41-23A-302(b), N.M.S.A. 1953 (Supp. 1975)] allows an extra three days for mailing. Rule 302(b) states: "Additional Time After Service by Mail. Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and the paper is served by

mail, three [3] days shall be added to the prescribed period." Defendant's memorandum was not untimely filed.

{3} The Court of Appeals' summary affirmance is reversed with directions to consider the issues raised on appeal.

McMANUS, C.J., and EASLEY, PAYNE and FEDERICI, JJ., concur.