# Administrative Office of the Courts

FOR IMMEDIATE RELEASE
May 20, 2021

Contact: Barry Massey, public information officer
bmassey@nmcourts.gov
505-470-3436

**NM Supreme Court rules jail inmate's two convictions of deadly weapon possession violate double jeopardy rights**

SANTA FE – The state Supreme Court today vacated one of a prisoner's two convictions for possession of a deadly weapon because the multiple punishments for violations of the same law violated constitutional double jeopardy rights.

In a unanimous opinion, the Court determined that Milo Benally's convictions were based on a "single course of conduct" rather than two separate, distinct acts. Under the facts in Benally's case, the justices concluded that the Legislature did not intend for multiple punishments of the law against possession of a deadly weapon by a prisoner.

Benally was sentenced to 34 years for possession of two makeshift weapons. He received nine years for the basic sentence for each violation of the law and an additional eight years for each conviction as sentencing enhancements because he was considered a habitual offender for having previous felony convictions.

One weapon was a razor blade with a handle formed from a folded playing card and the other was a piece of a plastic mop handle with a sharpened end. The weapons were found in Benally's bunk in 2015 during a "shakedown" search of his dormitory-style housing area at the San Juan County Detention Center.

In deciding the case, the Court clarified a two-step approach that judges are to follow in analyzing double jeopardy questions when a defendant receives more than one sentence for violating the same state law.

In an opinion written by Justice Barbara J. Vigil, the Court made clear that "the legislative purpose and intent in enacting the statute is controlling to this analysis" of whether the law allows multiple punishments to be imposed under the specific circumstances of a case.

In Benally's case, the justices were required to determine the number of offenses and punishments to allow – a legal question about the intended "unit of prosecution." The Court

found that the state law prohibiting prisoners from possessing a deadly weapon or explosive was "insurmountably ambiguous" on whether the Legislature intended to punish Benally "for his 'entire course of conduct' in possessing two deadly weapons while incarcerated" or whether separate punishments were intended for each weapon he possessed. The statute was enacted nearly 60 years ago.

The justices, following legal precedents from previous court decisions, concluded that "if the statute remains 'insurmountably ambiguous' as to its intended unit of prosecution, then we apply yet another canon of construction – the rule of lenity – and construe the statute in favor of the defendant. Under the rule of lenity, we presume that the Legislature did not intend to split a defendant's single course of conduct into separately punishable acts."

The law – Section 30-22-16 of New Mexico Statutes Annotated – prohibits inmates from "possessing any deadly weapon or explosive substance." But, the Court explained, the "statute's relevant phrase 'possessing any deadly weapon,' is ambiguous, as the stated unit of 'any' could indicate an intent to punish a prisoner separately for each weapon possessed or once for a class of weapons possessed."

In analyzing the legislative intent concerning multiple punishments, the Court stated, judges are to consider a range of matters including the statute's "wording, structure, legislative history, legislative purpose" as well as the potential sentence authorized by the law.

The Court affirmed a decision by the state Court of Appeals and ordered Benally's case back to the Eleventh Judicial District Court in San Juan County to vacate one of the defendant's convictions and to adjust his sentence.

###

To read the decision in *State v. Benally*, No. S-1-SC-37613, please visit the New Mexico Compilation Commission's website using the following link:

https://nmonesource.com/nmos/nmsc/en/item/497239/index.do