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HOUSE BILL 208

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Gail Chasey

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CRIMINAL SENTENCING; REQUIRING THAT AN AGGRAVATING CIRCUMSTANCE BE PROVEN BEYOND A REASONABLE DOUBT BEFORE A JUDGE MAY INCREASE A BASIC SENTENCE OF INCARCERATION; AMENDING A SECTION OF THE CRIMINAL SENTENCING ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-18-15.1 NMSA 1978 (being Laws 1979, Chapter 152, Section 2, as amended) is amended to read:

"31-18-15.1. ALTERATION OF BASIC SENTENCE--MITIGATING OR AGGRAVATING CIRCUMSTANCES--PROCEDURE.--

A. The court shall hold a sentencing hearing to determine if mitigating or aggravating circumstances exist and take whatever evidence or statements it deems will aid it in reaching a decision to alter a basic sentence. The ~~court~~ judge may alter the basic sentence as prescribed in Section

.173650.1SA

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 31-18-15 NMSA 1978 upon:

2 (1) a finding by the judge of any mitigating
3 [~~or aggravating~~] circumstances surrounding the offense or
4 concerning the offender [~~If the court determines to alter the~~
5 ~~basic sentence, it shall issue a brief statement of reasons for~~
6 ~~the alteration and incorporate that statement in the record of~~
7 ~~the case~~]; or

8 (2) a finding by the jury beyond a reasonable
9 doubt of any aggravating circumstances surrounding the offense
10 or concerning the offender.

11 B. [~~The judge shall not consider the use of a~~
12 ~~firearm or prior felony convictions as aggravating circumstances~~
13 ~~for the purpose of altering the basic sentence.~~] For the purpose
14 of this section, the following shall not be considered
15 aggravating circumstances:

16 (1) the use of a firearm, as provided in
17 Section 31-18-16 NMSA 1978;

18 (2) a prior felony conviction, as provided in
19 Section 31-18-17 NMSA 1978;

20 (3) the commission of a crime motivated by
21 hate, as provided in the Hate Crimes Act; or

22 (4) any evidence relating to the proof of an
23 essential element of the offense.

24 C. Presentation of evidence or statements regarding
25 an alleged aggravated circumstance shall be made to the jury

.173650.1SA

1 following the determination of guilt or innocence.

2 D. If the judge determines to alter the basic
3 sentence, the judge shall issue a brief statement of reasons
4 for the alteration and incorporate that statement in the record
5 of the case.

6 [~~G.~~] E. The amount of the alteration of the basic
7 sentence for noncapital felonies shall be determined by the
8 judge. However, in no case shall the alteration exceed one-
9 third of the basic sentence; provided that when the offender is
10 a serious youthful offender or a youthful offender, the judge
11 may reduce the sentence by more than one-third of the basic
12 sentence."

13 Section 2. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2009.

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