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SENATE BILL 172

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

SUE F. WILSON

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING THAT THE SUPREME COURT SHALL ISSUE A FINAL ADJUDICATION WITHIN TWO YEARS OF THE FILING OF A NOTICE OF APPEAL IN A CAPITAL FELONY CASE; PROVIDING ADDITIONAL AGGRAVATING CIRCUMSTANCES FOR CONSIDERATION IN CAPITAL FELONY PROCEEDINGS; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 31-20A-4 NMSA 1978 (being Laws 1979, Chapter 150, Section 5) is amended to read:

"31-20A-4. REVIEW OF JUDGMENT AND SENTENCE. --

A. The judgment of conviction and sentence of death shall be automatically reviewed by the supreme court of the state of New Mexico and within two years of the filing of the notice of appeal the supreme court shall issue a final

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1 adjudication.

2 B. In addition to the other matters on appeal, the
3 supreme court shall rule on the validity of the death
4 sentence.

5 C. The death penalty shall not be imposed if:

6 (1) the evidence does not support the finding
7 of a statutory aggravating circumstance;

8 (2) the evidence supports a finding that the
9 mitigating circumstances outweigh the aggravating
10 circumstances;

11 (3) the sentence of death was imposed under
12 the influence of passion, prejudice or any other arbitrary
13 factor; or

14 (4) the sentence of death is excessive or
15 disproportionate to the penalty imposed in similar cases,
16 considering both the crime and the defendant.

17 D. No error in the sentencing proceeding shall
18 result in the reversal of the conviction of a capital felony.
19 If the trial court is reversed on appeal because of error only
20 in the sentencing proceeding, the supreme court shall remand
21 solely for a new sentencing proceeding. The new sentencing
22 proceeding ordered and mandated shall apply only to the issue
23 of punishment.

24 E. In cases of remand for a new sentencing
25 proceeding, all exhibits and a transcript of all testimony and

. 120405. 2GJ

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1 other evidence admitted in the prior trial and sentencing
2 proceeding shall be admissible in the new sentencing
3 proceeding, and:

4 (1) if the sentencing proceeding was before a
5 jury, a new jury shall be impaneled for the new sentencing
6 proceeding;

7 (2) if the sentencing proceeding was before a
8 judge, the original trial judge shall conduct the new
9 sentencing proceeding; or

10 (3) if the sentencing proceeding was before a
11 judge and the original trial judge is unable or unavailable to
12 conduct a new sentencing proceeding, then another judge shall
13 be designated to conduct the new sentencing proceeding, and
14 the parties are entitled to disqualify the new judge on the
15 grounds set forth in Section 38-3-9 NMSA 1978 before the newly
16 designated judge exercises any discretion. "

17 Section 2. Section 31-20A-5 NMSA 1978 (being Laws 1979,
18 Chapter 150, Section 6, as amended) is amended to read:

19 "31-20A-5. AGGRAVATING CIRCUMSTANCES. -- The aggravating
20 circumstances to be considered by the sentencing court or jury
21 pursuant to the provisions of Section 31-20A-2 NMSA 1978 are
22 limited to the following:

23 A. the victim was a peace officer who was acting
24 in the lawful discharge of an official duty when he was
25 murdered;

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1 B. the murder was committed with intent to kill in
2 the commission of or attempt to commit [~~kidnaping~~] kidnapping,
3 criminal sexual contact of a minor or criminal sexual
4 penetration;

5 C. the murder was committed with the intent to
6 kill by the defendant while attempting to escape from a penal
7 institution of New Mexico;

8 D. while incarcerated in a penal institution in
9 New Mexico, the defendant, with the intent to kill, murdered a
10 person who was at the time incarcerated in or lawfully on the
11 premises of a penal institution in New Mexico. As used in
12 this subsection, "penal institution" includes facilities under
13 the jurisdiction of the corrections [~~and criminal~~
14 ~~rehabilitation~~] department and county and municipal jails;

15 E. while incarcerated in a penal institution in
16 New Mexico, the defendant, with the intent to kill, murdered
17 an employee of the corrections [~~and criminal rehabilitation~~]
18 department;

19 F. the capital felony was committed for hire;
20 [~~and~~]

21 G. the capital felony was murder of a witness to a
22 crime or any person likely to become a witness to a crime, for
23 the purpose of preventing report of the crime or testimony in
24 any criminal proceeding or for retaliation for the victim
25 having testified in any criminal proceeding;

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H. the defendant committed multiple murders; and
I. the victim of the capital felony was a person
less than ten years of age. "

Section 3. SEVERABILITY. --If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 4. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 1998.

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 January 30, 1998
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8 Mr. President:
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10 Your COMMITTEES' COMMITTEE, to whom has been referred
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12 SENATE BILL 172
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14 has had it under consideration and finds same to be GERMANE,
15 pursuant to Senate Executive Message No. 9, and thence referred to
16 the JUDICIARY COMMITTEE.
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19 Respectfully submitted,
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25 _____
Manny M. Aragon, Chairman

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Adopted _____ Not Adopted _____

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(Chief Clerk)

(Chief Clerk)

Date _____

S0172CC1

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

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6 February 4, 1998

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8 Mr. President:

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10 Your JUDICIARY COMMITTEE, to whom has been referred

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12 SENATE BILL 172

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14 has had it under consideration and reports same WITHOUT
15 RECOMMENDATION, and thence referred to the PUBLIC AFFAIRS
16 COMMITTEE.
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19 Respectfully submitted,

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25 Fernando R. Macias, Chairman

FORTY-SECOND LEGISLATURE
SECOND SESSION

KEYBOARD(TYPE SLUGS)

Page 9

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 4 For 3 Against

Yes: 4

No: Lopez, Sanchez, McSorley

Excused: Tsosie

Absent: None

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