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HOUSE BILL 574

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Joe Mohorovic

AN ACT

RELATING TO CAPITAL FELONY 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; EXPANDING THE LIST OF AGGRAVATING CIRCUMSTANCES CONSIDERED IN CAPITAL FELONY CASES; 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 a 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

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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 victim was a child less than eleven years
of age; and
I. the defendant, with the intent to kill,
murdered two or more people in a single incident."

Section 3. EFFECTIVE DATE. --The effective date of the
provisions of this act is July 1, 1999.