

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
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As Engrossed: H3/22/21

A Bill

HOUSE BILL 1731

By: Representatives Underwood, Pilkington

By: Senator Hester

For An Act To Be Entitled

AN ACT CONCERNING THE SENTENCING PROCEDURE DURING A CAPITAL MURDER TRIAL IN THE EVENT OF ERROR OCCURRING DURING THE SENTENCING PHASE OF THE TRIAL; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING THE SENTENCING PROCEDURE DURING A CAPITAL MURDER TRIAL IN THE EVENT OF ERROR OCCURRING DURING THE SENTENCING PHASE OF THE TRIAL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 5-4-602 is amended to read as follows:

5-4-602. Capital ~~murder~~ felony charge – Trial procedure.

The following procedures govern a trial of a person charged with a capital ~~murder~~ felony:

(1) The jury shall first hear all evidence relevant to the charge and shall then retire to reach a verdict of guilt or innocence;

(2) If the defendant is found not guilty of the capital offense charged but guilty of a lesser included offense, the sentence shall be determined and imposed as provided by law;

(3)(A) If the defendant is found guilty of a capital ~~murder~~ felony, the same jury shall sit again, except as provided in § 5-4-616, in order to:

(i) Hear additional evidence as provided by



subdivisions (4) and (5) of this section; and

(ii) Determine the sentence in the manner provided by § 5-4-603.

(B) However, if the state waives the death penalty, stipulates that no aggravating circumstance exists, or stipulates that mitigating circumstances outweigh aggravating circumstances, then:

(i) A hearing under subdivision (3)(A) of this section is not required; and

(ii) The trial court shall sentence the defendant to life imprisonment without parole.

(C) If the defendant was less than eighteen (18) years of age at the time of the offense, then a hearing under subdivision (3)(A) of this section is not required;

(4)(A) If the defendant and the state are accorded an opportunity to rebut the evidence, in determining the sentence evidence may be presented to the jury as to any:

(i) Matter relating to an aggravating circumstance enumerated in § 5-4-604;

(ii) Mitigating circumstance; or

(iii) Other matter relevant to punishment, including, but not limited to, victim impact evidence.

(B)(i) Evidence as to any mitigating circumstance may be presented by either the state or the defendant regardless of the evidence's admissibility under the rules governing admission of evidence in a trial of a criminal matter.

(ii) However, mitigating circumstance evidence shall be relevant to the issue of punishment, including, but not limited to, the nature and circumstances of the crime, and the defendant's character, background, history, and mental and physical condition as set forth in § 5-4-605.

(C) The admissibility of evidence relevant to an aggravating circumstance set forth in § 5-4-604 is governed by the rules governing the admission of evidence in a trial of a criminal matter.

(D) Any evidence admitted at the trial relevant to punishment may be considered by the jury without the necessity of reintroducing the evidence at the sentencing proceeding; and

(5) The state and the defendant or his or her counsel are permitted to present argument respecting sentencing:

- (A) The state shall open the argument;
- (B) The defendant is permitted to reply; and
- (C) The state is then permitted to reply in rebuttal.

SECTION 2. Arkansas Code § 5-4-616 is amended to read as follows:

5-4-616. Procedures following remand or mistrial of capital case after vacation of death sentence – Retroactive application.

~~(a)~~ Notwithstanding § 5-4-602(3) that requires that the same jury sit in the sentencing phase of a capital ~~murder~~ felony trial, the following shall apply:

(1)(A) Upon any appeal by the defendant when the sentence is of death, if the appellate court finds prejudicial error in the sentencing proceeding only, the appellate court may set aside the sentence of death and remand the case to the trial court in the jurisdiction in which the defendant was originally sentenced.

(B) No error in the sentencing proceeding shall result in the reversal of the conviction for a capital felony.

(C) When a capital case is remanded after vacation of a death sentence, the ~~prosecutor~~ prosecuting attorney may move the trial court to:

(i) Impose a sentence of life without parole, and the trial court may impose the sentence of life without parole without a hearing; ~~or~~

(ii) Impanel a new sentencing jury;

(2)(A) Upon the declaration of a mistrial during the sentencing proceeding, the prosecuting attorney may move the trial court to:

(i) Impose a sentence of life without parole, and the trial court may impose the sentence of life without parole without a hearing; or

(ii) Impanel a new sentencing jury.

(B) A mistrial during the sentencing proceeding shall not result in the invalidation of the finding of guilt for a capital felony;

~~(2)(3)~~ If the ~~prosecutor~~ prosecuting attorney elects subdivision ~~(a)(1)(C)(ii)~~ (1)(C)(ii) or subdivision (2)(A)(ii) of this section the trial

court shall impanel a new jury for the purpose of conducting a new sentencing proceeding;

~~(3)~~(4) A new sentencing proceeding is governed by the provisions of § 5-4-602(4) and (5) and §§ 5-4-603 – 5-4-605;

~~(4)(A)~~(5)(A) Any exhibit and a transcript of any testimony or other evidence properly admitted in the prior trial or preceding guilt phase of the trial and sentencing is admissible in the new sentencing proceeding.

(B) Additional relevant evidence may be admitted including testimony of a witness who testified at the previous trial; ~~and~~ or preceding guilt phase of the trial and sentencing; and

~~(5)~~(6) The provisions of this section:

(A) Are procedural; and

(B) Apply retroactively to any defendant sentenced to death after January 1, 1974.

~~(b) This section shall not be construed to amend a provision of § 5-4-602 requiring the same jury to sit in both the guilt and sentencing phases of the original trial.~~

/s/Underwood