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HOUSE BILL 436

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

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; AMENDING A SECTION 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 adjudication.

B. In addition to the other matters on appeal, the

underscored material = new  
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1 supreme court shall rule on the validity of the death  
2 sentence.

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

4 (1) the evidence does not support the finding  
5 of a statutory aggravating circumstance;

6 (2) the evidence supports a finding that the  
7 mitigating circumstances outweigh the aggravating  
8 circumstances;

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

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

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

22 E. In cases of remand for a new sentencing  
23 proceeding, all exhibits and a transcript of all testimony and  
24 other evidence admitted in the prior trial and sentencing  
25 proceeding shall be admissible in the new sentencing

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1 proceeding, and:

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

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

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

15 Section 2. EFFECTIVE DATE. -- The effective date of the  
16 provisions of this act is July 1, 2001.

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