

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 446

BY: MILES-LaGRANGE

AS INTRODUCED

AN ACT RELATING TO CRIMINAL PROCEDURE; AMENDING 22 O.S. 1981, SECTIONS 860 AND 926, WHICH RELATE TO JURY TRIAL PROCEDURE AND ASSESSMENT OF PUNISHMENT AND SECTION 1, CHAPTER 261, O.S.L. 1990 (22 O.S. SUPP. 1990, SECTION 929), WHICH RELATES TO RESENTENCING PROCEDURE; DELETING LANGUAGE RELATED TO JURY SENTENCING; REQUIRING COURT SENTENCING FOR NONCAPITAL CRIMINAL CASES; REPEALING 22 O.S. 1981, SECTIONS 927 AND 928, WHICH RELATE TO FAILURE OF A JURY TO AGREE ON PUNISHMENT AND EXCESS PUNISHMENT; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 22 O.S. 1981, Section 860, is amended to read as follows:

Section 860. In all cases in which the defendant is prosecuted for a second or subsequent offense, except in those cases in which former conviction is an element of the offense, the ~~procedure shall be as follows:~~

~~(a)~~ The trial shall proceed initially as though the offense charged was the first offense; when the indictment or information is read all reference to prior offenses shall be omitted; during the

trial of the case no reference shall be made nor evidence received of prior offenses except as permitted by the rules of evidence; the judge shall instruct the jury only on the offense charged; the jury shall be further instructed to determine only the guilt or innocence on the offense charged, ~~and that punishment at this time shall not be determined by the jury.~~

~~(b) If the verdict be guilty of the offense charged, that portion of the indictment or information relating to prior offenses shall be read to the jury and evidence of prior offenses shall be received. The court shall then instruct the jury on the law relating to second and subsequent offenses, and the jury shall then retire to determine (1) the fact of former conviction, and (2) the punishment, as in other cases.~~

SECTION 2. AMENDATORY 22 O.S. 1981, Section 926, is amended to read as follows:

Section 926. In all cases of a verdict of conviction for any offense against any of the laws of the State of Oklahoma, the jury may, ~~and shall upon the request of the defendant assess and declare the punishment in their verdict within the limitations fixed by law, and the court shall render a judgment according to such verdict, except as hereinafter provided~~ and shall determine and declare the punishment within the limitations fixed by law, except as provided in capital cases.

SECTION 3. AMENDATORY Section 1, Chapter 261, O.S.L. 1990 (22 O.S. Supp. 1990, Section 929), is amended to read as follows:

Section 929. A. Upon any appeal of a conviction by the defendant in a noncapital criminal case, the appellate court, if it finds prejudicial error in the sentencing proceeding only, may set aside the sentence rendered and remand the case to the trial court in the jurisdiction in which the defendant was originally sentenced for resentencing. No error in the sentencing proceeding shall

result in the reversal of the conviction in a criminal case unless the error directly affected the determination of guilt.

B. When a criminal case is remanded for vacation of a sentence, the court ~~may:~~

~~1. Set shall set the case for a nonjury sentencing proceeding;~~
~~or~~

~~2. If the defendant or the prosecutor so requests in writing, impanel a new sentencing jury.~~

C. ~~If a written request for a jury trial is filed within twenty (20) days of the date of the appellate court order, the trial court shall impanel a new jury for the purpose of conducting a new sentencing proceeding.~~

1. All exhibits and a transcript of all testimony and other evidence properly admitted in the prior trial and sentencing shall be admissible in the new sentencing proceeding. Additional relevant evidence may be admitted including testimony of witnesses who testified at the previous trial.

2. The provisions of this section are procedural and shall apply retroactively to any defendant sentenced in this state.

D. This section shall not be construed to amend or be in conflict with the provisions of Section 701.10 or 701.10a of Title 21 of the Oklahoma Statutes relating to sentencing and resentencing in death penalty cases; ~~Section 860 of Title 22 of the Oklahoma Statutes relating to the trial procedure for defendants prosecuted for second or subsequent offense; or the provisions of Sections 926 and 927 of Title 22 of the Oklahoma Statutes relating to assessment of punishment in the original trial proceedings.~~

SECTION 4. REPEALER 22 O.S. 1981, Sections 927 and 928, are hereby repealed.

SECTION 5. This act shall become effective September 1, 1991.

