STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2531 By: Steidley

AS INTRODUCED

An Act relating to crimes and punishments; amending 21 O.S. 1991, Sections 701.10, as amended by Section 1, Chapter 67, O.S.L. 1992, and 701.10a, as amended by Section 12, Chapter 325, O.S.L. 1993 (21 O.S. Supp. 1993, Sections 701.10 and 701.10a), which relate to sentencing for murder in the first degree; clarifying scope of sentence of life without parole; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 701.10, as amended by Section 1, Chapter 67, O.S.L. 1992 (21 O.S. Supp. 1993, Section 701.10), is amended to read as follows:

Section 701.10 A. Upon conviction or adjudication of guilt of a defendant of murder in the first degree, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death, life imprisonment without parole or life imprisonment. The sentence of life imprisonment without parole may be imposed only for convictions for capital felonies that were committed on or after November 1, 1987, or for resentencing proceedings pursuant to Section 701.10a of this title. The

proceeding shall be conducted by the trial judge before the same trial jury as soon as practicable without presentence investigation.

B. If the trial jury has been waived by the defendant and the state, or if the defendant pleaded guilty or nolo contendere, the sentencing proceeding shall be conducted before the court.

C. In the sentencing proceeding, evidence may be presented as to any mitigating circumstances or as to any of the aggravating circumstances enumerated in Section 701.7 et seq. of this title. Only such evidence in aggravation as the state has made known to the defendant prior to his trial shall be admissible. In addition, the state may introduce evidence about the victim and about the impact of the murder on the family of the victim.

D. This section shall not be construed to authorize the introduction of any evidence secured in violation of the Constitutions of the United States or of the State of Oklahoma. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 701.1a, as amended by Section 12, Chapter 325, O.S.L. 1993 (21 O.S. Supp. 1993, Section 701.10a), is amended to read as follows:

Section 701.10a Notwithstanding subsection A of Section 701.10 of this title, which requires that the same jury sit in the sentencing phase of a capital murder trial, the following shall apply:

1. Upon any appeal by the defendant where the sentence is of death, the appellate court, if it finds prejudicial error in the sentencing proceeding only, 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. No error in the sentencing proceeding shall result in the reversal of the conviction for a capital felony. When a capital case is remanded after vacation of a death sentence, the prosecutor may:

a. move the trial court to impose any sentence authorized by law at the time of the commission of the crime, which the trial court shall impose after a non-jury sentencing proceeding, provided, the original sentencing proceeding was conducted before the court or the original sentencing proceeding was conducted before a jury and both the defendant and the state waive jury sentencing after remand; or

b. move the trial court to impanel a new sentencing jury who shall determine the sentence of the defendant, which may be any sentence authorized by law at the time of the commission of the crime, provided, the original sentencing proceeding was conducted before a jury;

2. If the prosecutor elects to utilize the procedure provided in paragraph b of subsection 1 of this section, the trial court shall impanel a new jury for the purpose of conducting new sentencing proceedings;

3. Resentencing proceedings shall be governed by the provisions of Sections 701.10, 701.11 and 701.12 of this title;

4. 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;

5. The provisions of this section are procedural and shall apply retroactively to any defendant sentenced to death <u>whose sentence is set aside for prejudicial error in the sentencing proceeding. The provisions of this paragraph shall not result in the setting aside of a sentence of death because of a change in penalties imposed by law, if the defendant was sentenced pursuant to the law in effect at the time the capital felony was committed</u>;

6. This section shall not be construed to amend the provisions of Section 701.10 of this title, requiring the same jury to sit in both the guilt and sentencing phases of the original trial.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-2-7636 SD