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February 2, 2021

By: Daniels and Boren

An Act relating to sentencing proceedings; amending 22 O.S. 2011, Section 929, which relates to new sentencing proceedings; modifying eligibility requirements for jury resentencing; authorizing waiver of certain resentencing; requiring reinstatement of sentence upon certain waiver; prohibiting appeal of reinstated sentence; authorizing certain testimony; deleting retroactive applicability of certain provisions; updating statutory references; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2011, 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

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

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

5 1. Set the case for a nonjury sentencing proceeding; or

6 2. If the defendant ~~or the prosecutor so requests in writing~~
7 was originally sentenced by a jury, impanel a new sentencing jury
8 unless jury resentencing is waived by the defendant and the
9 prosecutor.

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

14 ~~1.~~ The defendant may affirmatively waive resentencing before
15 the appropriate trial court within ninety (90) days of the appellate
16 court order remanding for resentencing; provided, however, the
17 defendant may not waive resentencing after the commencement of the
18 resentencing hearing or trial. The defendant may not waive
19 resentencing on an appeal or petition for a writ of extraordinary
20 relief sought by the prosecution or if the original sentence was
21 unlawful. If the defendant affirmatively waives resentencing
22 pursuant to this subsection, the original sentence shall be
23 reinstated by the trial court. A sentence reinstated pursuant to
24 this subsection shall not be appealable by the defendant.

1 D. All exhibits and a transcript of all testimony and other
2 evidence properly admitted in the prior trial and sentencing shall
3 be admissible in the new sentencing proceeding. The defendant may
4 testify at his or her resentencing proceeding in accordance with the
5 requirements of the Oklahoma Evidence Code. Additional relevant
6 evidence may be admitted including testimony of witnesses who
7 testified at the previous trial.

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

10 ~~D.~~ E. This section shall not be construed to amend or be in
11 conflict with the provisions of Section 701.10 or 701.10a of Title
12 21 of the Oklahoma Statutes relating to sentencing and resentencing
13 in death penalty cases; Section ~~438~~ 860.1 of this ~~act~~ title relating
14 to the trial procedure for defendants prosecuted for second or
15 subsequent offense; or the provisions of Sections ~~439~~ 926.1 and ~~440~~
16 927.1 of this ~~act~~ title relating to assessment of punishment in the
17 original trial proceedings.

18 SECTION 2. This act shall become effective November 1, 2021.

19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
20 February 2, 2021 - DO PASS
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