

"AN ACT TO AMEND SECTION 1302 OF ACT 280 OF 1975, AS AMENDED [ARK. STAT. 41-1302], RELATING TO APPELLATE REVIEW OF A DEATH SENTENCE; AND FOR OTHER PURPOSES."

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

SECTION 1. Section 1302 of Act 280 of 1975, as amended, the same being Arkansas Statute 41-1302, is hereby amended to read as follows:

"Section 1302. (1) The jury shall impose a sentence of death if it unani- mously returns written findings that:

- (a) aggravating circumstances exist beyond a reasonable doubt; and
- (b) aggravating circumstances outweigh beyond a reasonable doubt all mitigating circumstances found to exist; and
- (c) aggravating circumstances justify a sentence of death beyond a reaasonable doubt.

(2) The jury shall impose a sentence of life imprisonment without parole if it finds that:

- (a) aggravating circumstances do not exist beyond a reasonable doubt; or
- (b) aggravating circumstances do not outweigh beyond a reasonable doubt all mitigating circumstances found to exist; or
- (c) aggravating circumstances do not justify a sentence of death beyond a reasonable doubt.

(3) If the jury does not make all findings required by subsection (1), the court shall impose a sentence of life imprisonment without parole.

(4) On appellate review of a death sentence, if the Arkansas Supreme Court finds that the jury erred in finding the existence of any aggravating circumstance or circumstances for any reason and if the jury found no miti- gating circumstances, the Arkansas Supreme Court shall conduct a harmless error review of the defendant/appellant's death sentence. The Arkansas Supreme Court shall conduct this harmless error review by:

- (i) determining that the remaining aggravating circumstances or cir- cumstance exists beyond a reasonable doubt; and
- (ii) by determining that the remaining aggravating circumstances or circumstance justifies a sentence of death beyond a reasonable doubt.

If the Arkansas Supreme Court concludes that the erroneous finding of any aggravating circumstances by the jury would not have changed the jury's deci- sion to impose the death penalty on the defendant/appellant, then a simple majority of the Court may vote to affirm the defendant/appellant's death sentence."

SECTION 2. All laws and parts of laws in conflict with this Act are hereby repealed.

APPROVED: 3/25/87

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