HOUSE BILL NO. ____

13rs2465-Balloon-Kinzer

Prepared By: Jason Thompson, Office of Revisor of Statutes
August 26, 2013

AN ACT concerning crimes, punishment and criminal procedure; relating to sentencing of certain persons to mandatory minimum term of imprisonment of 40 or 50 years; amending K.S.A. 2012 Supp. 21-6620 and repealing the existing ~~section~~ and 21-6624 sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2012 Supp. 21-6620 is hereby amended to read as follows: 21-6620. (a) Except as provided in K.S.A. 2012 Supp. 21-6618 and 21-6622, and amendments thereto, if a defendant is convicted of the crime of capital murder and a sentence of death is not imposed pursuant to subsection (e) of K.S.A. 2012 Supp. 21-6617, and amendments thereto, or requested pursuant to subsection (a) or (b) of K.S.A. 2012 Supp. 21-6617, and amendments thereto, the defendant shall be sentenced to life without the possibility of parole.

(b) The provisions of this subsection shall apply only to the crime of murder in the first degree based upon the finding of premeditated murder committed on or after the effective date of this act.

(1) If a defendant is convicted of murder in the first degree based upon the finding of premeditated murder, upon reasonable notice by the prosecuting attorney, the court shall determine, in accordance with this subsection, whether the defendant shall be required to serve a mandatory minimum term of imprisonment of 50 years or sentenced as otherwise provided by law.

(2) The court shall conduct a separate proceeding following the determination of the defendant's guilt for the jury to determine whether one or more aggravating circumstances exist. Such proceeding shall be conducted by the court before a jury as soon as practicable. If any person who served on the trial jury is unable to serve on the jury for the proceeding, the court

shall substitute an alternate juror who has been impaneled for the trial jury. If there are insufficient alternate jurors to replace trial jurors who are unable to serve at the proceeding, the court may conduct such proceeding before a jury which may have 12 or less jurors, but at no time less than six jurors. If the jury has been discharged prior to the proceeding, a new jury may be impaneled. Any decision of the jury regarding the existence of an aggravating circumstance shall be beyond a reasonable doubt. Jury selection procedures, qualifications of jurors and grounds for exemption or challenge of prospective jurors in criminal trials shall be applicable to the selection of such jury. The jury at the proceeding may be waived in the manner provided by K.S.A. 22-3403, and amendments thereto, for waiver of a trial jury. If the jury at the proceeding has been waived, such proceeding shall be conducted by the court.

(3) In the proceeding, evidence may be presented concerning any matter relating to any of the aggravating circumstances enumerated in K.S.A. 2012 Supp. 21-6624, and amendments thereto. Only such evidence of aggravating circumstances as the prosecuting attorney has made known to the defendant prior to the proceeding shall be admissible and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the time of the proceeding shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

(4) At the conclusion of the evidentiary portion of the proceeding, the court shall provide oral and written instructions to the jury to guide its deliberations. If the prosecuting attorney relies on subsection (a) of K.S.A. 2012 Supp. 21-6624, and amendments thereto, as an

aggravating circumstance, and the court finds that one or more of the defendant's prior convictions satisfy such subsection, the jury shall be instructed that a certified journal entry of a prior conviction is sufficient to prove the existence of such aggravating circumstance beyond a reasonable doubt.

(5) If, by unanimous vote, the jury finds beyond a reasonable doubt that one or more of the aggravating circumstances enumerated in K.S.A. 2012 Supp. 21-6624, and amendments thereto, exist, the jury shall designate, in writing, the statutory aggravating circumstances which it found. If, after a reasonable time for deliberation, the jury is unable to reach a unanimous sentencing decision, the court shall dismiss the jury and the defendant shall be sentenced as provided by law. In nonjury cases, the court shall designate, in writing, the specific circumstance or circumstances which the court found beyond a reasonable doubt.

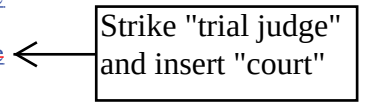
(6) If one or more of the aggravating circumstances enumerated in K.S.A. 2012 Supp. 21-6624, and amendments thereto, are found to exist beyond a reasonable doubt pursuant to this subsection, the defendant shall be sentenced pursuant to K.S.A. 2012 Supp. 21-6623, and amendments thereto, unless the sentencing judge finds substantial and compelling reasons, following a review of mitigating circumstances, to impose the sentence specified in this paragraph. If the sentencing judge does not impose the mandatory minimum term of imprisonment required by K.S.A. 2012 Supp. 21-6623, and amendments thereto, the judge shall state on the record at the time of sentencing the substantial and compelling reasons therefor, and the defendant shall be sentenced to imprisonment for life and shall not be eligible for probation or suspension, modification or reduction of sentence. In addition, the defendant shall not be eligible for parole prior to serving 25 years' imprisonment, and such 25 years' imprisonment shall

not be reduced by the application of good time credits. No other sentence shall be permitted.

(c) The provisions of this subsection shall apply only to the crime of murder in the first degree based upon the finding of premeditated murder committed prior to the effective date of this act.

(1) If a defendant is convicted of murder in the first degree based upon the finding of premeditated murder, upon reasonable notice by the prosecuting attorney, the court shall conduct a separate sentencing proceeding in accordance with this subsection to determine whether the defendant shall be required to serve a mandatory minimum term of imprisonment of 40 years or for crimes committed on and after July 1, 1999, a mandatory minimum term of imprisonment of 50 years or sentenced as otherwise provided by law.

(2) The sentencing proceeding shall be conducted by the court before a jury as soon as practicable. If any person who served on the trial jury is unable to serve on the jury for the sentencing proceeding, the court shall substitute an alternate juror who has been impaneled for the trial jury. If there are insufficient alternate jurors to replace trial jurors who are unable to serve at the sentencing proceeding, the court may conduct such proceeding before a jury which may have 12 or less jurors, but at no time less than six jurors. If there are insufficient alternate jurors to replace trial jurors who are unable to serve at the sentencing proceeding, the ~~trial judge~~ may summon a special jury of 12 persons which shall determine the defendant's sentence. If the trial jury has been discharged prior to sentencing, a new jury may be impaneled. Any decision to impose a mandatory minimum term of imprisonment of 40 or 50 years shall be by a unanimous jury. Jury selection procedures, qualifications of jurors and grounds for exemption or challenge of prospective jurors in criminal trials shall be applicable to the selection of such jury. The jury at



the sentencing proceeding may be waived in the manner provided by K.S.A. 22-3403, and amendments thereto, for waiver of a trial jury. If the jury at the sentencing proceeding has been waived, such proceeding shall be conducted by the court.

~~(c)~~ (3) In ~~order to make such determination, the court may be presented evidence~~ the sentencing proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in K.S.A. 2012 Supp. 21-6624, and amendments thereto, or for crimes committed prior to July 1, 2011, K.S.A. 21-4636, prior to its repeal, and any mitigating circumstances. Any such evidence which the court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. Only such evidence of aggravating circumstances as the ~~state~~ prosecuting attorney has made known to the defendant prior to the sentencing proceeding shall be admissible and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. Only such evidence of mitigating circumstances subject to discovery pursuant to K.S.A. 22-3212, and amendments thereto, that the defendant has made known to the prosecuting attorney prior to the sentencing proceeding shall be admissible. No testimony by the defendant at the time of sentencing shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

(4) At the conclusion of the evidentiary portion of the sentencing proceeding, the court shall provide oral and written instructions to the jury to guide its deliberations. If the prosecuting

attorney relies on subsection (a) of K.S.A. 2012 Supp. 21-6624, and amendments thereto, or for crimes committed prior to July 1, 2011, subsection (a) of K.S.A. 21-4636, prior to its repeal, as an aggravating circumstance, and the court finds that one or more of the defendant's prior convictions satisfy such subsection, the jury shall be instructed that a certified journal entry of a prior conviction is sufficient to prove the existence of such aggravating circumstance beyond a reasonable doubt.

~~(d)~~ (5) If ~~the court finds~~ , by unanimous vote, the jury finds beyond a reasonable doubt that one or more of the aggravating circumstances enumerated in K.S.A. 2012 Supp. 21-6624, and amendments thereto, or for crimes committed prior to July 1, 2011, K.S.A. 21-4636, prior to its repeal, exist and, further, that the existence of such aggravating circumstances is not outweighed by any mitigating circumstances which are found to exist, the defendant shall be sentenced pursuant to K.S.A. 2012 Supp. 21-6623, and amendments thereto; otherwise, the defendant shall be sentenced as provided by law. The ~~court~~ sentencing jury shall designate, in writing, the statutory aggravating circumstances which it found. The ~~court~~ trier of fact may make the findings required by this subsection for the purpose of determining whether to sentence a defendant pursuant to K.S.A. 2012 Supp. 21-6623, and amendments thereto, notwithstanding contrary findings made by the jury or court pursuant to subsection (e) of K.S.A. 2012 Supp. 21-6617, and amendments thereto, for the purpose of determining whether to sentence such defendant to death. If, after a reasonable time for deliberation, the jury is unable to reach a unanimous sentencing decision, the court shall dismiss the jury and the defendant shall be sentenced as provided by law. In nonjury cases, the court shall designate in writing the specific circumstance or circumstances which the court found beyond a reasonable doubt.

~~(d) The amendments to subsection (c) by this act establish a procedural rule for sentencing proceedings, and as such shall be construed and applied retroactively to all crimes committed prior to the effective date of this act.~~

(e) Notwithstanding the provisions of subsection (f), for all cases on appeal on or after the effective date of this act, if a sentence imposed under this section, prior to amendment by this act, is vacated for any reason other than sufficiency of the evidence as to all aggravating circumstances, resentencing shall be required under this section, as amended by this act, unless the prosecuting attorney chooses not to pursue such a sentence.

(f) In the event any sentence imposed under this section is held to be unconstitutional, the court having jurisdiction over a person previously sentenced shall cause such person to be brought before the court and shall sentence such person to the maximum term of imprisonment otherwise provided by law.

(g) If any provision or provisions of this section or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or provisions or application, and to this end the provisions of this section are severable.

Sec. 2. K.S.A. 2012 Supp. 21-6620 ~~is~~ hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

Strike and insert:
The amendments to subsection (c) by this act: (1) Establish a procedural rule for sentencing proceedings, and as such shall be construed and applied retroactively to all crimes committed prior to the effective date of this act, except as provided further in this subsection; (2) shall not apply to cases in which the defendant's conviction and sentence were final prior to June 17, 2013, unless the conviction or sentence has been vacated in a collateral proceeding, including, but not limited to, K.S.A. 22-3504 or 60-1507, and amendments thereto; and (3) shall apply only in sentencing proceedings otherwise authorized by law.

or under K.S.A. 21-4635, prior to its repeal,

Insert Sec. 2.
K.S.A. 2012 Supp. 21-6624, attached

and 21-6624 are

13rs2465-Balloon-Kinzer
Prepared By: Jason Thompson, Office of Revisor of Statutes
August 26, 2013

Sec. 2. K.S.A. 2012 Supp. 21-6624 is hereby amended to read as follows: 21-6624. Aggravating circumstances shall be limited to the following:

(a) The defendant was previously convicted of a felony in which the defendant inflicted great bodily harm, disfigurement, dismemberment or death on another.

(b) The defendant knowingly or purposely killed or created a great risk of death to more than one person.

(c) The defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.

(d) The defendant authorized or employed another person to commit the crime.

(e) The defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.

(f) The defendant committed the crime in an especially heinous, atrocious or cruel manner. A finding that the victim was aware of such victim's fate or had conscious pain and suffering as a result of the physical trauma that resulted in the victim's death is not necessary to find that the manner in which the defendant killed the victim was especially heinous, atrocious or cruel. Conduct which is heinous, atrocious or cruel may include, but is not limited to:

(1) Prior stalking of or criminal threats to the victim;

(2) preparation or planning, indicating an intention that the killing was meant to be especially heinous, atrocious or cruel;

(3) infliction of mental anguish or physical abuse before the victim's death;

(4) torture of the victim;

(5) continuous acts of violence begun before or continuing after the killing;

(6) desecration of the victim's body in a manner indicating a particular depravity of mind, either during or following the killing; or

(7) any other conduct the ~~court~~ trier of fact expressly finds is especially heinous.

(g) The defendant committed the crime while serving a sentence of imprisonment on conviction of a felony.

(h) The victim was killed while engaging in, or because of the victim's performance or prospective performance of, the victim's duties as a witness in a criminal proceeding.