

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2008-031021-001 DT

02/05/2014

HON. SHERRY K. STEPHENS

CLERK OF THE COURT  
D. Pico  
Deputy

STATE OF ARIZONA

JUAN M MARTINEZ

v.

JODI ANN ARIAS (001)

KIRK NURMI  
JENNIFER L WILLMOTT

CAPITAL CASE MANAGER

RULING

The Court has considered the defendant's Motion to Dismiss Death: Cruel and Unusual Punishment filed January 17, 2014, the State's Objection to Motion to Dismiss Death: Cruel and Unusual Punishment filed January 27, 2014, and the oral argument conducted on February 19, 2014.

Defendant argues that A.R.S. §13-752(K) is unconstitutional because permitting a retrial after a hung jury in the penalty phase is cruel and unusual punishment. Specifically, she asserts that by allowing the State to retry the penalty phase before a new jury, Arizona's death penalty scheme fails to genuinely narrow the class of offenders eligible for the death penalty. She acknowledges that in *State v. Medina*, 232 Ariz. 391, ¶¶17-28, 306 P.3d 48 (2013), the Arizona Supreme Court rejected arguments that A.R.S. §13-752(K) violates double jeopardy and is cruel and unusual punishment, but asserts that *Medina* did not address the issue she raises.

Defendant misconstrues the Eighth Amendment's narrowing requirement. In *Zant v. Stephens*, 462 U.S. 862 (1983), the United States Supreme Court set forth a narrowing requirement for statutory aggravating factors that render a defendant eligible for the death penalty. The Court held that the Eighth Amendment requires that aggravating factors in capital cases must "genuinely narrow the class of persons eligible for the death penalty and must reasonably justify the imposition of a more severe sentence on the defendant compared to others found guilty of murder." *Id.* at 877. Arizona's death penalty scheme requires that after finding a defendant guilty of first degree murder, the jury must find at least one of the aggravating

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circumstances set forth in §13-751(F) before it may impose a death sentence. By doing so, the jury narrows the class of persons eligible for the death penalty according to an objective legislative definition. *See Zant*, 462 U.S. at 878 (“[S]tatutory aggravating circumstances play a constitutionally necessary function at the stage of legislative definition: they circumscribe the class of persons eligible for the death penalty”). Thus, the narrowing requirement applies to the aggravation phase of the capital trial and not the penalty phase.

In this case, the first jury found the “especially cruel” aggravator (A.R.S. §13-751(F)(6)) proven, rendering the defendant eligible for the death penalty. The United States Supreme Court has upheld the constitutionality of this aggravator. *Walton v. Arizona*, 497 U.S. 639, 652-55 (1990), reversed on other grounds by *Ring v. Arizona*, 536 U.S. 584 (2002); *Lewis v. Jeffers*, 497 U.S. 764, 777-78 (1990). *See also*, *State v. Hampton*, 213 Ariz. 167, 140 P.3d 950 (2006). The Arizona Supreme Court also has found that the aggravating circumstances set forth in §13-751(F) genuinely narrow the class of murders that are death eligible and therefore do not violate the Eighth and Fourteenth Amendments to the United States Constitution and Article 2, § 15, of the Arizona Constitution. *State v. Hausner*, 230 Ariz. 60, 280 P.3d 604, 633 (2012); *State v. Pandeli (Pandeli I)*, 200 Ariz. 365, 382, 26 P.3d 1136, 1153 (2001).

In *Medina*, the Arizona Supreme Court rejected the defendant’s argument that A.R.S. §13-752(K) is constitutionally infirm in light of *Kansas v. Marsh*, 548 U.S. 163 (2006):

*Medina* characterizes *Kansas v. Marsh*, 548 U.S. 163 (2006) as holding that defaulting to a life sentence when a jury hangs in the penalty phase is a necessary part of a constitutional death penalty scheme. However, *Marsh* upheld the entirety of the Kansas capital scheme without stating or suggesting that such a ‘default’ rule was itself constitutionally required. *Id.* at 178.

*Medina*, 232 Ariz. at ¶26.

In *Marsh*, the United States Supreme Court reiterated that to be constitutional, a death penalty scheme must:

1) rationally narrow the class of death-eligible defendants; and (2) permit a jury to render a reasoned, individualized sentencing determination based on a death-eligible defendant’s record, personal characteristics, and the circumstances of his crime. ... So long as a state system satisfies these requirements, our precedents establish that a State enjoys a range of discretion in imposing the death penalty, including the manner in which aggravating and mitigating circumstances are to be weighed.

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548 U.S. at 174 (citations omitted).

As noted, Arizona's capital scheme has been found to be constitutional by the United States Supreme Court and the Arizona Supreme Court.

The fact that the first jury was unable to unanimously agree on the sentence to be imposed is inapposite to the Eighth Amendment's narrowing requirement. The class of first degree murderers eligible for the death penalty is not broadened by a jury's inability to determine the appropriate sentence in the penalty phase. Defendant has not been "acquitted" of the death sentence by the jury's failure to reach a verdict, and thus there is no constitutional bar to retrying the penalty phase. *See Medina*, 232 Ariz. at ¶¶17-28 (holding A.R.S. §13-752(K)'s provision for retrial after a hung penalty phase jury does not result in cruel and unusual punishment or violate the Double Jeopardy Clause); *State v. Reeves*, 233 Ariz. 182, ¶9, 310 P.3d 970 (2013)(same; "Reeves does not identify any persuasive reason for us to reconsider or distinguish *Medina*.").

IT IS ORDERED denying the defendant's Motion to Dismiss Death: Cruel and Unusual Punishment filed January 17, 2014.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.