

SUPPLEMENTAL OPINION ON REHEARING  
JULY 11, 1988

752 S.W.2d 762

APPEAL & ERROR — REMAND — WHERE THERE WAS NO ERROR OTHER THAN IN THE SENTENCING PHASE, THE CASE WAS REMANDED FOR RESENTENCING. — Where the supreme court found no error other than in the sentencing phase of the trial, it was appropriate to follow Ark. Code Ann. § 5-4-616 (1987), and the case was remanded to the trial court.

Appellee's petition for rehearing seeking clarification; decision modified.

*William R. Simpson, Jr.*, Public Defender, by: *Thomas B. Devine III*, for appellant.

*Steve Clark*, Att'y Gen., by: *J. Brent Standridge*, Asst. Att'y Gen., for appellee.

DAVID NEWBERN, Justice. The state has asked whether our decision to vacate the death sentence unless a new trial were sought within seventeen days meant a request for a full new trial or a resentencing only. Our opinion contemplated a request by the state to be made in this court for a full new trial. However, in its petition the state has called to our attention the provisions of Ark. Code Ann. § 5-4-616 (1987) which permit this court to remand to the trial court when a death sentence is vacated solely on the ground of error in the sentencing proceeding. The statute provides, in pertinent part:

Notwithstanding § 5-4-602(3), 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 a sentence of life without parole, and the trial court may impose such sentence without a hearing;

(B) Move the trial court to impanel a new sentencing jury.

[1] As we found no error other than in the sentencing phase of the trial, it is appropriate to follow the statute. We therefore modify the mandate of our opinion as follows: The sentence of death is vacated, and the case is remanded to the trial court.