

GUY LAVERN KUEHN *v.* STATE OF ARKANSAS

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489 S.W. 2d 505

Opinion delivered January 29, 1973

CRIMINAL LAW—CRUEL & UNUSUAL PUNISHMENT—REDUCTION OF PENALTY.—Appellant's conviction of first degree murder affirmed but the punishment reduced from death to life imprisonment as being the next highest available penalty in view of U.S. Supreme Court ruling in *Furman v. Georgia*, and in accordance with Ark. Stat. Ann. § 43-2308 (Repl. 1964).

Appeal from Crawford Circuit Court, *David Par-tain*, Judge; affirmed as modified and remanded.

*Eddie N. Christian, Charles R. Garner, and Burl C. Rotenberry*, for appellant.

*Ray Thornton*, Atty. Gen., by: *Henry Ginger*, Deputy Atty. Gen., for appellee.

FRANK HOLT, Justice. A jury convicted appellant of first degree murder and assessed his punishment at death by electrocution. On appeal the only contention is that the judgment on this verdict constitutes cruel and unusual punishment as forbidden by the United States Constitution and, consequently, his sentence must be reduced to life imprisonment. This contention is valid. *Furman v. Georgia*, 408 U.S. 238 (1972), *Graham v. State*, 253 Ark. 462, 486 S.W. 2d 675 (1972), and *O'Neal v. State*, 253 Ark. 574, 487 S.W. 2d 618.

The cause is remanded to the trial court for sentencing to life imprisonment which is the next highest available remedy. Ark. Stat. Ann. § 43-2308 (Repl. 1964).

Affirmed as modified and remanded.

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