

***Mack v. State*, 75 P.3d 803 (Nev. 2003).¹**

CRIMINAL LAW – SIXTH AMENDMENT RIGHT TO JURY TRIAL – DEATH PENALTY

Summary

A neighbor found Betty May murdered in her room at a boarding house. An autopsy determined that May died by strangulation and suffered a traumatic sexual penetration just prior to her death. Semen and blood samples were taken from May's body and clothing at the time of her death, and after twelve years passed, a detective ordered DNA testing of the evidence. Defendant Daryl Linnie Mack was charged with the first-degree murder of Betty May.

Law enforcement obtained a blood and saliva sample from Mack at two different times during the investigation. Both the semen and the blood stains matched Mack's DNA. Additionally, blood and tissue found under May's fingertips matched Mack's DNA. Mack was charged with first-degree murder with deliberation and premeditation and/or during the perpetration or attempted perpetration of a sexual assault. The State sought the death penalty, alleging two aggravating circumstances: (1) Mack committed the murder while under sentence of imprisonment, and (2) he committed the murder while committing or fleeing after committing sexual assault.

Prior to trial, Mack advised the court he wanted to waive his right to a jury trial and have a bench trial. The district court continued the matter on two separate occasions to allow Mack time to discuss this option with his attorney. At a subsequent hearing, Mack stated that he understood a three-judge panel would determine his sentence if he were found guilty during the bench trial, and he signed a statement confirming his decision.

On appeal, Mack argued that the three-judge sentence determination violated his right to a jury trial. Mack claimed that the relevant Nevada statute² did not give him the option of having a bench trial and a jury sentencing hearing. Additionally, Mack argued that his death sentence was excessive.

Issue and Disposition

Issues

Does a three-judge panel's determination of a death sentence violate a defendant's Sixth Amendment right to a jury trial, when the defendant knowingly and voluntarily waived his right to a jury trial?

Is a death sentence excessive when a three-judge panel gave weight to only one of two aggravating circumstances, found several mitigating factors, yet determined the aggravating circumstances outweighed the mitigating factors?

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² NEV. REV. STAT. 175.558 (2003). Procedure when person is convicted upon plea of guilty or guilty but mentally ill or upon trial without jury and death penalty is sought. *Id.* (emphasis added.).

Disposition

No. A defendant is not entitled to a jury at sentencing when he waived his right to a jury trial.

No. The Nevada Supreme Court indicated that the determination of a death sentence should turn on the question of whether “the crime and defendant before [the court] on appeal is of the class or kind that warrants the imposition of death[.]”³

Commentary

State of the Law Before *Mack*

In 2002, the United States Supreme Court held a defendant’s Sixth Amendment right to a jury trial was violated when a capital sentencing scheme required a judge determine aggravating circumstances.⁴ In *Colwell v. State*, the Nevada Supreme Court held that the *Ring* holding did not apply where a defendant pleaded guilty and waived his right to a jury trial.⁵

At issue in *Ring* was an Arizona law that specified following a jury trial, a judge could determine the presence (or absence) of aggravating factors, as necessary for imposition of the death penalty.⁶ The United States Supreme Court determined that the Sixth Amendment right to a jury trial prohibited the defendant from receiving a potentially greater sentence by the judge’s findings than the facts that were determined during the jury trial.⁷ Therefore, Arizona could not circumvent the Sixth Amendment by characterizing a judge’s balancing of aggravating factors as “sentencing factors.”⁸

In *Colwell*, the defendant pleaded guilty to first-degree murder, burglary, and robbery.⁹ In analyzing the effect of *Ring*, the Nevada Supreme Court indicated that *Ring*’s holding was decided not to increase the accuracy of death sentencing, but rather to simply ensure defendants’ Sixth Amendment right to a jury trial.¹⁰ The *Colwell* Court distinguished its case from *Ring*, stating that the defendant in *Colwell* pleaded guilty and waived his right to a jury trial.¹¹ Further, the defendant was thoroughly questioned as to his understanding of his rights.¹²

³ *Mack v. State*, 75 P.3d 803, 807 (Nev. 2003).

⁴ *Ring v. Arizona*, 536 U.S. 584 (2002); U.S. CONST. amend VI. The Sixth Amendment states, in part: “In all criminal prosecutions, the accused shall enjoy the right to a...trial, by an impartial jury....” *Id.*

⁵ *Colwell v. State*, 59 P.3d 463, 473 (Nev. 2002). The Sixth Amendment is made applicable to the states through the Fourteenth Amendment. U.S. CONST. amend. XVI.

⁶ *Ring*, 536 U.S. at 588.

⁷ *Id.* (citing *Apprendi v. New Jersey*, 530 U.S. 466, 483 (2000)). In *Apprendi*, the sentencing judge found that defendant’s crime was racially motivated, resulting in a “hate crime enhancement” sentence. The Court held that the application of the additional sentence violated his Sixth Amendment right to be found guilty of every element of the crime for which he was charged. *Apprendi*, 530 U.S. at 477.

⁸ *Id.* In *Ring*, the Court overruled an earlier decision in *Walton v. Arizona*, 497 U.S. 639 (1990), where it previously held Arizona’s sentencing scheme was compatible with the right to a jury trial because the facts being weighed by a judge were not elements of the murder charge. *Id.*

⁹ *Colwell*, 59 P.3d at 466.

¹⁰ *Id.* at 473.

¹¹ *Id.*

¹² *Id.*

The Nevada Supreme Court did not interpret *Ring* as altering the consequence of a defendant's guilty plea because the U.S. Supreme Court has held the entry of a guilty plea results in waiver of several constitutional rights, including the Sixth Amendment right to a jury trial.¹³ Therefore, because the defendant in *Colwell* knowingly waived his right to a jury trial, his Sixth Amendment rights were not violated when a three-judge panel determined his death sentence.¹⁴

In every death penalty case, Nevada law requires the Nevada Supreme Court review the sentence according to factors set forth in Nevada Revised Statute § 177.055(2).¹⁵ In previous holdings, the court has overturned death sentences where the mentally disturbed defendant irrationally attacked a stranger in the presence of one aggravating circumstance of armed robbery that occurred fifteen years prior,¹⁶ in an emotionally charged murder with one aggravating circumstance of armed robbery,¹⁷ and in an emotionally charged confrontation in the presence of one aggravating circumstance of robbery occurring eighteen years prior.¹⁸

Effect of *Mack* on Current Law

The *Mack* court applied its previous ruling in *Colwell*, holding that the three-judge panel's determination of Mack's death penalty did not violate his Sixth Amendment because he waived his right to a trial by jury.¹⁹ Therefore, the court declined to apply the *Ring* holding in cases where the defendant has either entered a guilty plea, or waived his right to a jury trial.

Mack argued that he wanted only a bench trial for the guilt phase, and a jury for the penalty phase, but did not have that opportunity. The court determined that there was nothing in the record to show Mack's intent was such. Rather, the record indicated that Mack understood that his waiver of a jury trial would result in a three-judge panel determining his sentence.²⁰ The court reasoned that defendant Mack did have a choice in deciding his guilt and sentence: either entirely by jury or entirely without a jury.²¹ Mack had the ultimate right to make decisions regarding his trial, as long as he intentionally surrendered his jury trial right.²²

In addition to the right to a jury trial, the Nevada Supreme Court reviewed whether Mack's death sentence was excessive. In its consideration, the three-judge panel reviewed mitigating factors, including: Mack's former diagnoses of anxiety and psychotic disorders,²³ his history of drug abuse since high school, his assistance to other inmates in adjustment and rehabilitation, his cooperation with court personnel, his expression of regret that May died, and absence of violence during previous incarceration. The court compared Mack's situation to other cases where the court has overturned death sentences and found that the death sentence was not excessive. The court indicated that the mitigating factors did not outweigh the two aggravating

¹³ *Id.* at 474 (citing *Boykin v. Arizona*, 395 U.S. 238, 243 (1969)).

¹⁴ *Id.*

¹⁵ NEV. REV. STAT. 177.055(2) (2003). This section reads, in part: (d) Whether the sentence of death is excessive, considering both the crime and the defendant. *Id.*

¹⁶ *Haynes v. State*, 739 P.2d 497 (Nev. 1987).

¹⁷ *Biondi v. State*, 699 P.2d 1062 (Nev. 1985).

¹⁸ *Chambers v. State*, 944 P.2d 805 (Nev. 1997).

¹⁹ *Mack*, 75 P.3d at 805.

²⁰ *Id.* at 806.

²¹ *Id.*

²² *Id.* (citing *Jones v. Barnes*, 463 U.S. 745, 751 (1983)).

²³ There was no evidence that Mack suffered from a mental disorder during commitment of the May murder. *Id.* at 805.

circumstances.²⁴ Specifically, Mack had a second aggravating circumstance than did Haynes, Biondi, and Chambers, and the record did not indicate an emotionally charged confrontation, nor did Mack lack rational capacity.²⁵

Unanswered Questions

The Nevada Supreme Court quickly dismissed Mack’s mitigating circumstances stating that the three-judge panel “did not find them particularly weighty,” and seemed to distinguish previous cases based on the quantity of aggravating circumstances.²⁶ The court did not discuss the reasons why the three-judge panel failed to find the mitigating factors weighty, nor did it engage in a discussion of the mitigating factors.

Survey of the Law in Other Jurisdictions

In *Sanchez v. Cal. Sup. Ct.*, a California court also noted that *Ring* does not apply in cases that concern a voluntarily entered guilty plea or the waiver of jury trial.²⁷ The *Sanchez* Court stated, “We do not read *Apprendi* and *Ring* as providing support for the proposition that a defendant may not waive his or her jury trial rights by entering a plea of guilty to a criminal offense.”²⁸

The Florida Supreme Court stated that the number of aggravating factors cannot simply be compared to the number of mitigating factors. Instead, all the circumstances of a case should be weighed and compared with the facts of other death sentence cases.²⁹

Conclusion

Defendants have the ultimate choice in determining whether they have a trial by judge or jury. When a defendant knowingly waives his or her right to a jury trial, and a judge determines whether aggravating circumstances exist to impose the death penalty, the defendant’s Sixth Amendment right to a jury trial is not violated.

²⁴ Mack committed murder while under sentence of imprisonment, and he committed the murder while committing or fleeing after committing a sexual assault. *Id.* at 803. Additionally, the State failed to offer a separate strangulation murder as a third aggravating circumstance. *Id.* at 807-08.

²⁵ *Id.* at 807-08.

²⁶ *Id.* at 808.

²⁷ *Sanchez v. Cal. Sup. Ct.*, 126 Cal.Rptr.2d 200, 206 (2nd Dist. 2002).

²⁸ *Id.*

²⁹ *Owen v. State*, 862 So. 2d 687 (Fla. 2003).