

IN THE CIRCUIT COURT OF
THE SEVENTEENTH JUDICIAL
CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

STATE OF FLORIDA)
)
)
v.)
)
Clarck Paul)
)
Defendant)

CASE NO.: 16009425CF10A

JUDGE: FEIN

**State's Motion To Utilize New Statutory Death Penalty Sentencing Procedures
of Section 921.141 of the Florida Statutes (2023)**

COMES NOW, the State of Florida, by and through the undersigned Assistant State Attorney, and moves this Honorable Court to **Utilize New Statutory Death Penalty Sentencing Procedures of Section 921.141 of the Florida Statutes (2023)** as follows:

On April 20, 2023, at 10am, Governor Ron Desantis signed into law Senate Bill 450. Senate Bill 450, now enacted and signed into law by the Governor of the State of Florida, amends sections 921.141 and 921.142 of the Florida Statutes, relating to the procedures for the imposition of the death penalty in Florida. Section 921.141(2)(c) of the Florida Statutes now provides as follows regarding the jury's recommendation:

(c) If at least eight jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of death. If fewer than eight jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of life imprisonment without the possibility of parole.

Fla. Stat. 921.141(2)(c) (2023).

Section (3) of the new statute (IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH) is amended to reflect the following:

(a) If the jury has recommended a sentence of:

...

2. Death, and at least eight jurors recommend a sentence of death, the court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may consider only an aggravating factor that was unanimously found to exist by the jury. The court may impose a sentence of death only if the jury unanimously finds at least one aggravating factor beyond a reasonable doubt.

Fla. Stat. 921.141(3)(a)2 (2023).

Finally, subsection (4) was amended to require a written order from the sentencing judge for both a sentence of life imprisonment and death. It also requires that the court include "in its written order the reasons for not accepting the jury's recommended sentence, if applicable." Fla. Stat. 921.141(4) (2023).

Senate Bill 450 states that it is to "take effect upon becoming a law."

The commencement of trial occurs at different times for different purposes. For speedy trial purposes, rule 3.191(c) of the Florida Rules of Criminal Procedure states that trial commences when the jury panel is sworn for voir dire examination. *See*

McDermott v. State, 383 So. 2d 712, 714 (Fla. 2d DCA 1980) (stating that “[w]hen the jury panel was sworn for voir dire examination, the trial was deemed to have commenced for the purpose of the speedy trial rule.”) (citing *Moore v. State*, 368 So. 2d 1291 (Fla. 1979)). For purposes of double jeopardy, jeopardy attaches when the jury is impaneled and sworn. *See Knight v. State*, 211 So. 3d 1, 11 (Fla. 2016) (stating that double jeopardy attaches when the jury is impaneled and sworn in); *see also Serfass v. United States*, 95 S. Ct. 1055 (stating that the United States Supreme Court has “consistently adhered to the view that jeopardy does not attach, and the constitutional prohibition can have no application, until a defendant is put to trial before the trier of facts...”). A new procedural law would be effective when jeopardy attaches, which in this case occurred after the governor signed the bill.

The changes noted in section 921.141 of the Florida Statutes are procedural in nature and must be the law utilized by this Court in the instant trial. A procedural law is one in which the law provides or regulates the steps by which a defendant who violated a law is punished. *Love v. State*, 286 So. 3d 177, 185 (Fla. 2019) (citing *State v. Garcia*, 229 So. 2d 236, 238 (Fla. 1969)). Therefore, a new "prospective" decision, a new rule of court, or a new procedural statute relating to a trial right will not be applicable in any case that is tried prior to the effective date of the new law. However, the new decision, rule, or statute will be applied in other pending cases in which the relevant operative event, the trial, has not yet occurred. *See, e.g., Jackson*

v. Green, 402 So. 2d 553 (Fla. 1st DCA 1981) (the operative event for purposes of the new speedy trial rule was the taking of the petitioner into custody, and, because this event occurred prior to the effective date of the new rule, the new rule did not apply in the petitioner's case); *Johnson v. State*, 371 So. 2d 556 (Fla. 2d DCA 1979) (although the appellant's crime was committed prior to the effective date of a new procedural statute relating to sentencing, the statute was applicable in the appellant's case because the sentencing occurred after the effective date of the statute).

This issue has been previously addressed in an identical situation by the United States Supreme Court, interpreting procedural changes to Florida's death penalty statute. In *Dobbert v. Florida*, 97 S.Ct. 2290 (1977), an appeal from the Florida Supreme Court, the Supreme Court of the United States addressed an ex post facto claim of the defendant related to Florida's death penalty statute. During the period of time between the commission of his crime and his trial, Florida amended section 921.141 removing the presumption of a death penalty absent a recommendation of the jury for mercy. *Id.* at 2299. The new procedure provided for a separate sentencing proceeding, presentation of mitigating circumstances, an advisory opinion of the jury, and final determination by the trial judge. *Id.*

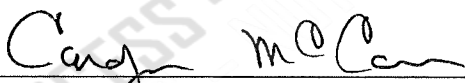
The defendant argued to the Court that the change in the sentencing procedure deprived him of his right to have the jury determine what penalty should be imposed, without review by the trial judge. *Id.* at 2297-2298. The Court found that the change in the law was procedural. *Id.* at 2298. The Court noted that even though a change in the law may work to the disadvantage of a defendant, a procedural change is not ex post facto. *Id.* (citing *Hopt v. Utah*, 4 S.Ct. 202 (1884); *Thompson v. Missouri*, 18 S.Ct. 922 (1898)). The Court stated that the change in the statute simply altered the methods utilized in determining whether the death penalty was to be imposed; there was no change in the quantum of punishment attached to the crime of First Degree Murder. *Id.*

The changes contained in the now current version of section 921.141 are clearly procedural, like those addressed in *Dobbert*, and as such, they must be the laws applied to this matter.

WHEREFORE, the State of Florida respectfully requests this Honorable Court to Grant the instant motion.

I HEREBY CERTIFY that a copy of the foregoing was furnished by hand delivery and e-mail to Office of Criminal Conflict and Civil Regional Counsel, Antony Ryan, Director District 4 550 S. Andrews Avenue, Suite 200Fort Lauderdale, FL 33301, Esq. (this 24th day of April, 2023.

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