

1 for resentencing. No error in the sentencing proceeding shall
2 result in the reversal of the conviction in a criminal case unless
3 the error directly affected the determination of guilt.

4 B. When a criminal case is remanded for vacation of a sentence,
5 the court ~~may~~ shall:

6 1. Set the case for a nonjury sentencing proceeding; or

7 2. If the defendant ~~or the prosecutor so requests in writing~~
8 was originally sentenced by a jury, impanel a new sentencing jury
9 unless jury resentencing is waived by the defendant and the
10 prosecutor.

11 C. ~~If a written request for a jury trial is filed within twenty~~
12 ~~(20) days of the date of the appellate court order, the trial court~~
13 ~~shall impanel a new jury for the purpose of conducting a new~~
14 ~~sentencing proceeding.~~

15 ~~1.~~ The defendant may affirmatively waive resentencing before
16 the appropriate trial court within ninety (90) days of the appellate
17 court order remanding for resentencing; provided, however, the
18 defendant may not waive resentencing after the commencement of the
19 resentencing hearing or trial. The defendant may not waive
20 resentencing on an appeal or petition for a writ of extraordinary
21 relief sought by the prosecution or if the original sentence was
22 unlawful. If the defendant affirmatively waives resentencing
23 pursuant to this subsection, the original sentence shall be
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1 reinstated by the trial court. A sentence reinstated pursuant to
2 this subsection shall not be appealable by the defendant.

3 D. All exhibits and a transcript of all testimony and other
4 evidence properly admitted in the prior trial and sentencing shall
5 be admissible in the new sentencing proceeding. The defendant may
6 testify at his or her resentencing proceeding in accordance with the
7 requirements of the Oklahoma Evidence Code. Additional relevant
8 evidence may be admitted including testimony of witnesses who
9 testified at the previous trial.

10 ~~2. The provisions of this section are procedural and shall~~
11 ~~apply retroactively to any defendant sentenced in this state.~~

12 ~~D.~~ E. This section shall not be construed to amend or be in
13 conflict with the provisions of Section 701.10 or 701.10a of Title
14 21 of the Oklahoma Statutes relating to sentencing and resentencing
15 in death penalty cases; Section ~~438~~ 860.1 of this ~~act~~ title relating
16 to the trial procedure for defendants prosecuted for second or
17 subsequent offense; or the provisions of Sections ~~439~~ 926.1 and ~~440~~
18 927.1 of this ~~act~~ title relating to assessment of punishment in the
19 original trial proceedings.

20 SECTION 2. This act shall become effective November 1, 2023.

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22 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CRIMINAL, dated
23 04/05/2023 - DO PASS.

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