

NEW MEXICO SUPREME COURT

Fry v. Lopez

447 P.3d 1086 (N.M. 2019) · Decided June 28, 2019

SUMMARY

The New Mexico Supreme Court reconsidered the comparative proportionality of Robert Fry’s and Timothy Allen’s death sentences under NMSA 1978, Section 31-20A-4(C)(4). The court held that the sentences were disproportionate to penalties imposed in similar cases and violated the statute, remanding for imposition of life imprisonment. The decision also revisited the court’s prior approach to comparative proportionality review under State v. Garcia.

CASE DETAILS

COURT	New Mexico Supreme Court
WRITING FOR THE COURT	Vigil, Justice; Nakamura, Justice; Chávez, Justice, Retired, specially concurring
JURISDICTION	New Mexico
DECIDED	June 28, 2019
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Consolidated interlocutory appeal from the district court's denial of Fry's and Allen's motions to dismiss their death sentences in state habeas corpus proceedings.
STANDARD OF REVIEW	De novo review of statutory and constitutional challenges; comparative proportionality review of the death sentences under NMSA 1978, Section 31-20A-4(C)(4).
PRECEDENTIAL VALUE	Published precedential opinion of the New Mexico Supreme Court
PARTIES	Robert Fry, Timothy Allen v. Lopez

TOPICS

- sentencing
- post-conviction relief
- statutory interpretation
- appellate procedure
- cruel and unusual punishment

PRACTICE AREAS

constitutional law

criminal procedure

capital punishment

post-conviction relief

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether the court could reconsider the comparative proportionality of Fry's and Allen's death sentences during state habeas proceedings despite having previously upheld those sentences on direct appeal.
2. Whether Garcia's framework for comparative proportionality review under NMSA 1978, Section 31-20A-4(C)(4), should be modified.
3. What universe and pool of cases must be used for comparative proportionality review of a New Mexico death sentence.
4. What test determines whether a death sentence is disproportionate under Section 31-20A-4(C)(4).
5. Whether Fry's and Allen's death sentences were statutorily disproportionate to the penalties imposed in similar cases.

HOLDINGS

1. The court may reconsider the comparative proportionality of a death sentence in habeas proceedings when an intervening change in law or fact, or the interests of justice, warrants reconsideration. The prospective repeal of the death penalty supplied both an intervening change and an extraordinary circumstance justifying review.
2. The universe of comparison cases remains limited to cases in which the prosecution sought the death penalty, the case proceeded to a capital sentencing hearing at which the jury found at least one aggravating circumstance, and the resulting death or life sentence was affirmed on appeal.
3. The comparison pool must include not only cases involving the same statutory aggravating circumstance but also factually similar crimes in which the jury had the option to impose the death penalty.
4. A death sentence is disproportionate under Section 31-20A-4(C)(4) when juries do not generally impose death in similar cases and there is no real justification for imposing death in the case under review.
5. Fry's and Allen's death sentences were statutorily disproportionate because death was not generally imposed in cases involving the same aggravating circumstances or materially similar facts, and the State identified no real justification for the sentencing disparity.

KEY QUOTATIONS

"We therefore reject Petitioners' argument that we should expand the universe of cases to all cases in which the death penalty could have been pursued." (1104)

"We do not question the proportionality of the death sentences in the traditional sense but instead consider whether there is truly a meaningful basis for distinguishing Fry and Allen from similar cases resulting in a life sentence." (1111)

"We therefore hold the imposition of the death sentence upon Fry and Allen to be disproportionate under Section 31-20A-4(C)(4), hereby vacate their death sentences, and remand for sentences of life imprisonment."

FACTUAL BACKGROUND

Robert Fry killed a woman during an attempted sexual assault after kidnapping her, stabbing her, and striking her in the head with a sledgehammer. His jury found kidnapping as an aggravating circumstance and imposed death. Timothy Allen killed a seventeen-year-old girl by ligature strangulation after kidnapping her; evidence indicated that she had been sexually assaulted. His jury found kidnapping and murder of a witness as aggravating circumstances and imposed death. The court compared their cases with New Mexico capital cases involving the same aggravating circumstances and factually similar murders, most of which resulted in life sentences rather than death.

PROCEDURAL HISTORY

Fry and Allen were convicted of first-degree murder and sentenced to death under New Mexico's pre-2009 Capital Felony Sentencing Act. After the Legislature prospectively repealed the death penalty, they filed state habeas petitions and moved to dismiss their death sentences, arguing, among other things, that the sentences were unconstitutional and statutorily disproportionate. The district court denied the motions, granted interlocutory appeals, and stayed the executions. The New Mexico Supreme Court granted review, reconsidered its comparative-proportionality methodology, vacated both death sentences, and remanded for life imprisonment.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Vacate Fry's and Allen's death sentences and remand each case to the district court to impose a sentence of life imprisonment.

CASES CITED

- State v. Garcia, 1983-NMSC-008, 99 N.M. 771, 664 P.2d 969
- Furman v. Georgia, 408 U.S. 238 (1972)
- Gregg v. Georgia, 428 U.S. 153 (1976)
- Pulley v. Harris, 465 U.S. 37 (1984)
- Clark v. Tansy, 1994-NMSC-098, 118 N.M. 486, 882 P.2d 527
- State v. Pangaea Cinema, 2013-NMSC-044, 310 P.3d 604
- State v. Wyrostek, 1994-NMSC-042, 117 N.M. 514, 873 P.2d 260
- State v. Ameer, 2018-NMSC-030
- State v. Fry, 2006-NMSC-001, 138 N.M. 700, 126 P.3d 516
- State v. Allen, 2000-NMSC-002, 128 N.M. 482, 994 P.2d 728
- State v. Bland, 958 S.W.2d 651 (Tenn. 1997)

- State v. Addison, 737 A.3d 1225 (N.H. 2010)
- State v. Papasavvas, 790 A.2d 798 (N.J. 2002) (per curiam)
- State v. Clark, 1999-NMSC-035, 128 N.M. 119, 990 P.2d 793
- State v. Pieri, 2009-NMSC-019, 146 N.M. 155, 207 P.3d 1132
- State v. Gregory, 427 P.3d 621 (Wash. 2018)

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