2020 South Dakota Legislature

Senate Bill 64

Introduced by: ***Senator*** *Rusch*

An Act to prohibit capital punishment for any person suffering from a severe mental illness.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 23A-27A-26.1 be AMENDED:

23A-27A-26.1. Death Penalty--Intellectually Disabled--Severely Mentally Ill.

Notwithstanding any other provision of law, the death penalty may not be imposed upon ~~any~~:

(1) Any person who was intellectually disabled at the time of the commission of the offense and whose intellectual disability was manifested and documented before the age of eighteen years; or

(2) Any person who was severely mentally ill at the time of the commission of the offense, whose severe mental illness was manifested and documented prior to the commission of the offense, and whose offense was a product of the person's mental illness or due to an irresistible impulse that was caused by the person's mental illness.

Section 2. That § 23A-27A-26.2 be AMENDED:

23A-27A-26.2. Definitions.

As used in §§ 23A-27A-26.1 ~~to~~ through 23A-27A-26.7~~, inclusive, intellectual~~:

(1) Intellectual disability means significant subaverage general intellectual functioning existing concurrently with substantial related deficits in applicable adaptive skill areas. An intelligence quotient exceeding seventy on a reliable standardized measure of intelligence is presumptive evidence that the defendant does not have significant subaverage general intellectual functioning; and

(2) Severe mental illness means substantial organic or psychiatric disorder of thought, mood, perception, orientation, or memory that significantly impairs judgment, and behavior, including:

(a) Schizophrenia with psychotic symptoms;

(b) Major depression with psychotic features;

(c) Depression;

(d) Bipolar disorder with psychotic features;

(e) Bipolar disorder;

(f) Delusional disorder;

(g) Schizophreniform disorder;

(h) Schizoaffective disorder;

(i) Substance/medication induced psychotic disorder;

(j) Posttraumatic stress disorder; or

(k) Traumatic brain injury.

Section 3. That § 23A-27A-26.3 be AMENDED:

23A-27A-26.3. Procedures--Intellectual Disability--Severe Mental Illness--Defendant.

Not later than ninety days before the commencement of trial, ~~the~~ a defendant may, upon a motion alleging reasonable cause to believe the defendant was intellectually disabled or severely mentally ill at the time of the commission of the offense, apply for an order directing that an intellectual disability or severe mental illness hearing be conducted before trial. If, upon review of the defendant's motion and any response to the defendant's motion, the court finds reasonable cause to believe the defendant was intellectually disabled or severely mentally ill, the court shall promptly conduct a hearing without a jury to determine whether the defendant was intellectually disabled or severely mentally ill.

If the court finds after the hearing that the defendant was not intellectually disabled or severely mentally ill at the time of the commission of the offense, the court shall, before commencement of trial, enter an order stating the court's finding. Nothing in this ~~paragraph~~ section precludes the defendant from presenting mitigating evidence of an intellectual disability or severe mental illness at the sentencing phase of the trial. If the court finds after the hearing that the defendant established an intellectual disability or a severe mental illness by a preponderance of the evidence, the court shall before commencement of trial, enter an order stating the court's finding.

Unless the court's order is reversed on appeal, a separate sentencing proceeding under this section may not be conducted if the defendant is ~~thereafter~~ convicted of murder in the first degree after entry of the court's order. If a separate sentencing proceeding is not conducted, the court, upon conviction of a defendant for the crime of murder in the first degree, shall sentence the defendant to life imprisonment.

Section 4. That § 23A-27A-26.4 be AMENDED:

23A-27A-26.4. Appeal--State.

If ~~the~~ a court enters an order ~~pursuant to~~ in accordance with § 23A-27A-26.3, finding that the defendant was intellectually disabled or severely mentally ill at the time of the commission of the offense, the state may appeal as of right from the order. Upon entering ~~such an~~ the order, the court shall ~~afford~~ allow the state ~~a reasonable period of time, which may not be less than~~ at least ten days~~,~~ to determine whether to take an appeal from the order ~~finding that the defendant was intellectually disabled. The taking of an~~ . An appeal by the state under this section stays the ~~effectiveness of the~~ court's order and any order ~~fixing~~ setting a date for trial.

Section 5. That § 23A-27A-26.5 be AMENDED:

23A-27A-26.5. Examination--Defendant--Expert--Recording--Admissibility.

If a defendant ~~serves notice pursuant to~~ files a motion under § 23A-27A-26.3, the state may make application, upon notice to the defendant, for an order directing that the defendant submit to an examination by a psychiatrist, licensed psychologist, or licensed psychiatric social worker designated by the state's attorney, for the purpose of rebutting any evidence offered by the defendant. Counsel for the state and the defendant ~~have the right to~~ may be present at the examination. A videotaped recording of the examination shall be made available to the defendant and the state's attorney promptly after its conclusion. The state's attorney shall promptly serve on the defendant a written copy of the findings and evaluation of the examiner. ~~If a defendant is subjected to an examination pursuant to an order issued in accordance with this section, any~~

Any statement made by the defendant ~~for the purpose of the~~ during an examination under this section is ~~inadmissible in~~ admissible as evidence ~~against the defendant in any criminal action or proceeding on every issue other than that of~~ only as to whether the defendant was intellectually disabled or severely mentally ill at the time of the commission of the offense~~, but such statement is admissible upon such an issue~~ or as to whether ~~or not it~~ the statement would ~~otherwise~~ be deemed a privileged communication.

Section 6. That § 23A-27A-26.6 be AMENDED:

23A-27A-26.6. Applicability.

~~The~~ For any claim of intellectual disability, the provisions of §§ 23A-27A-26.1 to 23A-27A-26.7, inclusive, apply only to ~~offenses~~ any offense alleged to have been committed by the defendant after July 1, 2000, and for any claim of severe mental illness, only to any offense alleged to have been committed by the defendant after July 1, 2020.