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CLERK OF THE SEDGWICK COUNTY DISTRICT COURT
CASE NUMBER: 2020-CR-000879-FE
IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT
DIVISION 26

STATE OF KANSAS,
Plaintiff,

vs.

KYLE D. YOUNG,
Defendant.

Case No. 20 CR 879

JOURNAL ENTRY

On the 19TH day of December, 2022, the above captioned matter was before the Court for resolution of the issue of which party bears the burden of proof in regards to Defendant's constitutional challenge to the Kansas death penalty, as well as the State's motion to dismiss the challenge on the pleadings. Appearances were announced on the record.

WHEREUPON the Court, after review of the submissions of the parties, the case file, and being duly advised in the premises, makes the following findings of fact and conclusions of law:

1. Analysis of this issue begins from the well-settled principle that a lower court is duty-bound to follow Kansas Supreme Court precedent, absent some indication that our Supreme Court is departing from its previous position. *State v. Rodriguez*, 305 Kan. 1139, 1144, 390 P.3d 903 (2017); *Henderson v. Montgomery County Board of Commissioners*, 57 Kan. App.2d 818, 830, 461 P.3d 64 (2020).

Stare decisis instructs that points of law established by a court are generally followed by the same court and courts of lower rank in later cases in which the same legal issue is raised. A court will overrule prior caselaw when: (1) it is clearly convinced that a rule of law established in its earlier cases was originally erroneous or is no longer sound because of changing conditions and (2) more good than harm will come by departing from precedent. *State v. Brosseit*, 308 Kan. 743, Syl. ¶3, 42 P.3d 1036 (2018).

2. The Defendant has challenged the constitutionality of the death penalty under Sections 1, 5, 9 and 10 of the Kansas Constitution. Each will be addressed in turn.

Section 1 – Right to Life

3. Section 1 of the Kansas Constitution Bill of Rights states that all “men are possessed of equal and inalienable rights, among which are life, liberty and the pursuit of happiness.” In *Hodes & Nauser, MDs P.A. v. Schmidt*, 309 Kan. 610, Syl. ¶20, 440 P.3d 461 (2019), the Kansas Supreme Court held:

In a case involving a suspect classification or fundamental interest, the courts peel away the protective presumption of constitutionality and adopt an attitude of active and critical analysis, subjecting the classification to strict scrutiny. In that case, the burden of proof is shifted from plaintiff to defendant and the ordinary presumption of validity of the statute is reversed.

The Defendant argues, relying on *Hodes*, that the State carries the burden of proving that the death penalty does not offend Section 1 of that Kansas Constitution.

4. Subsequent to *Hodes*, the Kansas Supreme Court issued its decision in *State v. Carr*, 314 Kan. 615, 502 P.3d 546 (2022). In that decision, the Court held that the death penalty does not violate Section 1 of the Kansas Constitution:

Section 1 of the Kansas Constitution Bill of Rights acknowledges a person’s inalienable right to life, but that right is not absolute or nonforfeitable. Once a defendant had been convicted of capital murder beyond a reasonable doubt, the defendant forfeits his or her natural rights under section 1 (“among which are life, liberty, and the pursuit of happiness”) and the state may impose punishment for that crime pursuant to the provisions of Kansas’ capital sentencing scheme.

The *Carr* decision is in line with prior Kansas Supreme Court decision in *State v. Kleypas*, 272 Kan. 894, 1052, 40 P.3d 139 (2001), *cert denied* 537 U.S. 834, 123 S.Ct. 144, 154 L. Ed.2d 53 (2002) *abrogated on other grounds by Kansas v. Marsh*, 548 U.S. 163, 173, 126 S.Ct. 2516, 165 L. Ed.2d 429 (2006).

5. Because this Court is duty-bound to follow the precedent of the Kansas Supreme Court, the Defendant bears the burden to establish facts in the present case that distinguish the *Carr* and *Kleypas* decisions, or to establish that the precedent set by the those decisions is otherwise inapplicable to this case.

Section 5 and 10 – Right to Jury Trial

6. The Defendant’s Section 5 and 10 challenge has likewise been addressed by the Kansas Supreme Court in *State v. Carr*, 314 Kan. at 648-49:

To ascertain the meaning of the term “jury” under section 5, we first look to the common, ordinary meaning of this term. Dictionary definitions provide a reliable source for that meaning. *Midwest Crane & Rigging, LLC v. Kansas Corporation Comm’n*, 306 Kan. 845, 851, 397 P.3d 1205 (2017). Black’s Law Dictionary defines a “jury” as “[a] group of persons selected according to law and given the power to decide questions of fact and return a verdict in the case submitted to them.” Black’s Law Dictionary 1024 (11th ed. 2019). Similarly, the American Heritage Dictionary of the English Language defines “jury” as “[a] body of persons selected to decide a verdict in a legal case, based upon the evidence presented, after being given instructions on the applicable law.” The American Heritage Dictionary of the English Language 953 (5th ed. 2011); see also Webster’s New World College Dictionary 790 (5th ed. 2014) (defining “jury” as “a group of people sworn to hear the evidence and inquire into the facts in a law case, and to give a decision in accordance with their findings”).

Thus, we construe the term “jury,” as used in section 5, to denote a legally selected group of persons sworn to determine issues of fact and return a verdict based on the evidence and the law as instructed. This construction is also in accord with our precedent defining the traditional function and duty of a Kansas jury. See *State v. McClanahan*, 212 Kan. 208, 217, 510 P.2d 153 (1973) (“[I]t is the proper function and duty of a jury to accept the rules of law given to it in the instructions by the court, apply those rules of law in determining what facts are proven and render a verdict based thereon.”); see also *State v. Boeschling*, 311 Kan. 124, 130, 458 P.3d 234 (2020) (recognizing same traditional functions and duties of jury).

Under this plain meaning interpretation, section 5’s right to trial by jury does not prohibit the state from death qualifying juries. Importantly, K.S.A. 22-3410 does not permit the removal of any or all prospective jurors who have conscientious objections to the death penalty. The death qualification process is constrained by the Eighth Amendment to the United States Constitution, which prohibits the state from excluding jurors in capital trials “simply because they voiced general objections to the death penalty or expressed conscientious or

religious scruples against its infliction.” *Witherspoon v. Illinois*, 391 U.S. 510, 522, 88 S. Ct. 1770, 20 L. Ed. 2d 776 (1968). Instead, the State may only remove those prospective jurors whose opposition to the death penalty “would ‘prevent or substantially impair the performance of [their] duties as [jurors] in accordance with [their] instructions and [their] oath[s].’ ” *Wainwright v. Witt*, 469 U.S. 412, 424, 105 S. Ct. 844, 83 L. Ed. 2d 841 (1985).

In other words, death qualification eliminates only those prospective jurors who cannot decide issues of fact and reach a decision based on the evidence presented and the law as instructed—i.e., those persons who are unable to fulfill the traditional functions and duties of a Kansas jury. And, as established above, the plain meaning of the term “jury,” as used in section 5, excludes these types of prospective jurors from its definition. In this regard, the process of death qualification under K.S.A. 22-3410 facilitates the very trial by “jury” that section 5 guarantees.

7. Because this Court is duty-bound to follow the precedent of the Kansas Supreme Court, the Defendant bears the burden to establish facts in the present case that distinguish the *Carr* decision, or to establish that the precedent set by that decision is otherwise inapplicable to this case.

Section 9 – Cruel and Unusual Punishment

8. Finally, the Defendant’s Section 9 challenge has been previously addressed in *State v. Kleypas*, 272 Kan. at 1051:

We decline to interpret the Cruel and Unusual Punishment Clause found in §9 of the Kansas Constitution Bill of Rights in a manner different from that found in the Eighth Amendment to the United States Constitution. As a result, we conclude that the death penalty does not constitute cruel and unusual punishment *per se* under the Kansas Constitution.

9. Because this Court is duty-bound to follow the precedent of the Kansas Supreme Court, the Defendant bears the burden to establish facts in the present case that distinguish the *Carr* decision, or to establish that the precedent set by that decision is otherwise inapplicable to this case.

10. As to the State's request for a judgment on the pleadings, that request is denied. The Court, after hearing the Defendant's evidentiary presentation, will rule upon those constitutional challenges that are ripe for a ruling, and will take under advisement those that are not.

IT IS THEREFORE BY THE COURT ORDERED, ADJUDGED AND DECREED that the above findings of fact and conclusions of law be, and they are, hereby made part of the Order, Judgment and Decree of this Court.

IT IS SO ORDERED.



HON. JEFFREY E. GOERING, Division 26
CHIEF JUDGE

CERTIFICATE OF SERVICE

The undersigned hereby certifies on this 27th day of January, 2023, that a true and correct copy of the above and foregoing Journal Entry was served by the Court's eFlex electronic filing system and by United State Postal Service, postage prepaid addressed to:

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