

02/06/04 "See News Release 014 for any concurrences and/or dissents."
SUPREME COURT OF LOUISIANA

No. 02-KA-1462

STATE OF LOUISIANA

v.

MICHAEL D. LEGRAND

ON APPLICATION FOR REHEARING

PER CURIAM

Granted for limited purpose of addressing defendant's motion to remand this case, which was filed on November 20, 2002, and which this Court referred to the merits of the appeal by order issued on December 18, 2002. Otherwise, the application for rehearing is denied.

On March 3, 2003, defendant filed its brief on appeal asserting 51 assignments of error. In footnote 98, included in the section addressing assignment of error no. 32 ("the death sentence is disproportionate under the facts of this case"), defendant referred to the motion to remand, as follows:

This Court has referred to the merits of this appeal Mr. Legrand's Motion to Remand for Adjudication of his Motion for New Trial Under the Proper Standard of Review. In the motion, which is incorporated by reference herein, he argues that the trial court failed to apply the proper standard of review to address Mr. Legrand's arguments that his death sentence was against the weight of the evidence or that, under La. C.Crim. P. Art. 851(5), the ends of justice would be served by granting a new sentencing hearing. In the event that this Court does not reverse on other grounds, Mr. Legrand respectfully urges that the case must be remanded to allow the trial court to analyze his motion for new trial under the proper standard of review.

This Court failed to address the motion to remand in the main opinion or the appendix to the main opinion and we therefore granted the application for rehearing for the limited purpose of ruling on the motion to remand.

In the motion to remand, defendant argues that the trial court erroneously denied his motion for new trial, because in denying the motion for new trial, the trial judge wrongly believed that "I have a non-discretionary decision anyway," when in

fact, the judge has discretion to grant a new trial when he is of the opinion that the ends of justice would be served by the granting of a new trial. La. C.Crim. P. Art. 851(5).

Having reviewed the transcript of the hearing and ruling on the motion for new trial, it is clear that the trial judge applied the correct standard of review in denying the motion for new trial. After hearing argument from counsel addressing the motion for new trial, the trial judge stated that he had thought about the case thoroughly and determined that the jury had an abundance of evidence to find defendant guilty of first degree murder and then went through all the arguments individually and found them meritless. He then stated “I am going to deny the motion for new trial.” Although defendant argues that the trial court has the discretion to order a new trial on sentencing under La. C.Cr.P. art. 851(5), there is no indication in this record that the trial judge felt that a new trial was warranted and accordingly, he denied the motion.

The court then proceeded to sentencing. The trial judge asked if defendant wished to say anything before sentencing and defense counsel referred the trial judge to a letter defendant had written him which had been placed under seal. The trial judge stated that he had not read the letter and defense counsel asked that it be unsealed when it became part of the record. The trial judge then stated,

“Okay. It can be unsealed for whatever purposes. I mean I’ll read it later, but it’s not supposed to influence my decision.

[Defense counsel]: Correct.

Trial judge: And I have a non-discretionary decision anyway.

Thus, although defendant asserts in his rehearing application that “the trial court denied the motion [for new trial] under the mistaken belief that it had a ‘non-discretionary decision,’” it is clear that the trial court was not referring to his discretion in ruling on the motion for new trial, but rather, having already denied

defendant's motion for new trial, was merely commenting on his discretion in sentencing the defendant in accordance with the jury's determination pursuant to La. C.Cr.P. art. 905.8.

Accordingly, defendant's motion to remand is denied.