



Pacific Law Journal Review of Selected Nevada Legislative

Volume 1989 | Issue 1

Article 61

1-1-1989

Criminal Procedure; death penalty appeals

The University of the Pacific, McGeorge School of Law

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Recommended Citation

The University of the Pacific, McGeorge School of Law, *Criminal Procedure; death penalty appeals*, 1989 U. PAC. L. REV. (2019).

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Criminal Procedure; death penalty appeals

NEV. REV. STAT. §§ 176.491, 176.505 (amended).
 AB 553 (Committee on Judiciary); 1989 STAT. Ch. 223

Existing law grants an automatic appeal to the Nevada Supreme Court in certain death penalty cases.¹ A person sentenced to death can also petition the Nevada Supreme Court for relief from judgment of death² or apply to a federal court for a writ of habeas corpus or to the United States Supreme Court for a writ of certiorari.³ Although existing law forbids a stay of execution by the Nevada Supreme Court pending the filing of a petition with a federal court,⁴ the Nevada Supreme Court routinely stays executions pending such a petition by defendants.⁵ Existing law requires the district court to wait for the Nevada Supreme Court to issue a remittitur⁶ in a death penalty appeal before issuing a new warrant of execution.⁷

Chapter 223 requires a district court to issue a new warrant of execution without waiting for an issuance of remittitur following the denial of a death penalty appeal or affirmation of a death sentence by the Nevada Supreme Court.⁸ Chapter 223 clarifies existing law by specifying that a stay of issuance of remittitur by the Nevada Supreme Court does not prohibit a district court from issuing a new warrant of execution.⁹ In addition, a death sentence cannot be stayed follow-

1. NEV. REV. STAT. § 177.055 (1987) (automatic appeal where defendant entered plea of not guilty or not guilty by reason of insanity). The Nevada Supreme Court, after reviewing a death sentence, may affirm the sentence, set the sentence aside and order a new penalty hearing, or set the judgment aside and impose a new sentence of life imprisonment without the possibility of parole. *Id.*

2. *See id.* § 176.487 (1987) (list of factors the Supreme Court considers in making a determination to hear an appeal for post-conviction relief and stay of execution). The death sentence must be stayed if an appeal is taken. *Id.* § 177.095 (1988).

3. *Id.* §§ 34.010-.030 (1988); 34.040-.140 (1987); 34.720-.730 (1988); 34.735-.830 (1987); 176.355 (1987). *See generally id.* §§ 34.010-.030 (1988); 34.040-.140 (1987); 34.720-.730 (1988); 34.735-.830 (1987) (procedures relating to writs).

4. *See id.* § 176.491 (1987) (limitation on stays of execution).

5. Telephone conversation with Dave Sarnowski, Nevada Deputy Attorney General (June 8, 1989) (notes on file at *Pacific Law Journal*).

6. A remittitur consists of a certified copy of the judgment, a copy of the opinion of the court, and any direction as to costs. NEV. R. APP. P. 41.

7. NEV. REV. STAT. § 176.505 (1987). *See id.* § 176.345 (1987) (definition of warrant of execution). The district court judge selects a week within which a judgment must be executed. *Id.* *See also id.* § 176.505 (1987) (warrant of execution requires the Director of the Department of Prisons to execute the judgment).

8. 1989 Nev. Stat. ch. 223, sec. 2, at 491 (amending NEV. REV. STAT. § 176.505).

9. 1989 Nev. Stat. ch. 223, secs. 1, 2 at 491 (amending NEV. REV. STAT. §§ 176.491-.505).

ing the Nevada Supreme Court's denial of an appeal or affirmation of a death judgment unless the person sentenced to death obtains either a stay in federal court¹⁰ or a new stay of execution from the Nevada Supreme Court.¹¹

BAS

10. See 1989 Nev. Stat. ch. 223, sec. 1, at 491 (amending NEV. REV. STAT. § 176.491) (a person sentenced to death must obtain a stay in the federal court to which an application for a writ of certiorari or habeas corpus is made).

11. *Id.* at 491 (amending NEV. REV. STAT. § 176.491) (stay of execution from Supreme Court obtained pursuant to Nevada Revised Statutes sections 34 or 177). The Supreme Court can issue a new stay of execution if a petition for the stay raises new constitutional claims for relief or presents substantial grounds upon which relief might be granted and a valid justification why the claim was not presented in a prior proceeding. See Nev. Rev. Stat. § 176.487 (1987).

Criminal Procedure; discipline program—male felons

NEV. REV. STAT. §§ 176.—, 209.—(new); §§ 176.145, 176.158, 176.175, 176.205, 176.221 (amended).

SB 98 (Hickey); 1989 STAT. Ch. 780

(Effective September 1, 1990)*

Under Chapter 780 the court may require qualified¹ males, convicted of a nonviolent felony, to participate in a regimental discipline program as an alternative to incarceration.² The program must include:

* See 1989 Nev. Stat. ch. 780, sec. 12, at 1855 (enacting NEV. REV. STAT. § 176.—) (the program becomes effective on September 1, 1990, and the funds for the program are appropriated to the department of prisons immediately).

1. See 1989 Nev. Stat. ch. 780, sec. 4, at 1852 (enacting NEV. REV. STAT. § 176.—) (to qualify, a convicted male felon must be at least 18 years old, never imprisoned as an adult for more than six months, and otherwise be eligible for probation). See *id.* sec. 5, at 1853 (amending NEV. REV. STAT. § 176.145) (if appropriate, the presentence investigation must contain a recommendation that the defendant undergo the regimental discipline program).

2. *Id.* sec. 3, at 1852 (enacting NEV. REV. STAT. § 176.—). See *id.* sec. 1, at 1852 (enacting NEV. REV. STAT. § 209.—) (Director of the Department of Prisons must establish the program with the approval of the board of parole commissioners). See also NEV. REV. STAT. §§ 176.175 1 (1987) (amended by 1989 Nev. Stat. ch. 780, sec. 7, at 1852) (definition of board); 209.061 (1987) (definition of director). The court may require the defendant to participate in the program before sentencing. 1989 Nev. Stat. ch. 780, sec. 4, at 1852 (enacting NEV. REV. STAT. § 176.—). If the defendant satisfactorily completes the program after a probation violation, he is to be returned to the supervision of the chief parole and probation