



## COLORADO'S DEATH PENALTY — BACK IN THE HANDS OF A JURY

by Colette S. Peters

In Colorado, sentencing decisions in capital cases have historically been decided by unanimous juries. For a brief period, the decisions were made by three-judge panels.<sup>1</sup> Recently, the Colorado Supreme Court voided two sentences to death that were decided by a three-judge panel. This *Issue Brief* provides a history of who makes sentencing decisions in capital cases and provides an explanation of how offenders who were sentenced to death by a three-judge panel will move through the Department of Corrections (DOC), if they are resentenced to life without parole.

### Time Line

**Prior to 1995** — A life or death sentence was imposed by a jury in capital cases.

**1995** — The three-judge panel was created to decide between life and death sentences.

**2002** — In anticipation of the three-judge panel being deemed unconstitutional based on the U.S. Supreme Court case *Ring v. Arizona*, the Colorado General Assembly returned capital sentencing decisions to a unanimous jury.

**2003** — The Colorado Supreme Court ruled in *Woldt v. People* and *Martinez v. People* that Colorado's three-judge panel sentencing system was unconstitutional. The two cases were sent back to the trial court for resentencing to life without parole. Colorado's Attorney General has filed a motion to stay the issuance of these orders, and has also requested a review of the decision by the U.S. Supreme Court.

### From the Three-judge Panel Back to a Unanimous Jury

The Colorado General Assembly returned sentencing decisions in capital cases to a unanimous jury during the 2002 Special Session. The General Assembly made this decision based on a U.S. Supreme Court ruling and in anticipation of a Colorado Supreme Court ruling finding Colorado's three judge-panel unconstitutional.

**Three-judge panel overturned.** The Colorado Supreme Court, in February 2003, ruled in *Woldt v. People* and *Martinez v. People* that Colorado's three-judge panel sentencing system was unconstitutional based on the U.S. Supreme Court's ruling in *Ring v. Arizona*. The state Court ruled that the three-judge panel, which required judges to make factual findings as a prerequisite to imposition of the death penalty, violated a defendant's Sixth Amendment right to trial by jury.

The Supreme Court declined to employ the section of law enacted during the 2002 Special Session that gives discretion to the Court, in the event it found the three-judge panel unconstitutional, to affirm the death sentences decided by a three-judge panel or to remand these cases for a new capital sentencing proceeding before a jury.<sup>2</sup> The Court decided it could not follow this section of law because to do so it would have to:

- ignore another mandatory provision of Colorado law that was in existence while the three-judge panel sentencing provision was law that states that if the death penalty is deemed unconstitutional, persons already sentenced to death shall be sentenced to life;

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1. For a more detailed presentation of the death penalty in Colorado prior to 2002, see Issue Brief 02-06, *The Death Penalty — Who Decides, Judge or Jury?*, by Colette S. Peters.

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2. Section 18-1.4-102 (8) and (9), C.R.S.

- determine the existence of aggravating factors which judges cannot do under *Ring v. Arizona*; and
- disregard principles of the *ex post facto* clauses of the United States and Colorado constitutions which forbid a punishment that is more severe than what was law when the crime was committed.

Instead, the state Court remanded both cases to the trial court for resentencing to life in prison without the possibility of parole.

Colorado's Attorney General has requested that the U.S. Supreme Court review the *Woldt* and *Martinez* rulings. The Attorney General argues that there are several conflicting state and federal court applications of the *Ring* ruling and is requesting clarification of the applicability of *Ring*. In the meantime, he has filed a motion to stay the issuance of the Colorado Supreme Court's orders in these cases.

### **From Death to Life Without the Possibility of Parole**

***Death Sentence.*** George Woldt, Francisco Martinez Jr., and William "Cody" Neal are the only defendants who have been sentenced to death under Colorado's three-judge panel sentencing scheme.<sup>3</sup> They are currently classified at the administrative segregation custody level and incarcerated in a Level V correctional facility like all others who receive a death sentence. As inmates who are classified at the administrative segregation custody level they are subject to the following conditions of custody:

- constant supervision;
- 23-hour lockup;
- outside movement only with restraints;
- night and evening movement is restricted to emergency movement only; and
- limited access to select treatment programs only when approved by the facility warden.

***Custody and prison security levels if resentenced to life without the possibility of parole.*** If the offenders' sentences are changed to life without the possibility of parole, they could then be classified at the medium, close, or administrative segregation level, after

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3. Neal has filed separate motions in Jefferson County District Court to be resentenced to life imprisonment based on the *Woldt* and *Martinez* decisions, but there has not been a ruling. His sentence has not yet been vacated, but has been stayed.

taking into account various factors, such as the crime, the sentence, prior criminal history, and institutional behavior.<sup>4</sup> If classified at their current level (administrative segregation), their conditions of custody will remain the same as they are now and they will remain in a Level V correctional facility.<sup>5</sup> If they are reclassified at the close custody level they will be subject to the following conditions of custody:

- constant supervision outside of their cell;
- day movement during structured times;
- night and evening movement only when ordered by Administrative Head or Shift Commander;
- jobs are limited to those available within the facility; and
- access to select programs is limited to those approved by facility Administrative Head.

Inmates classified at the close custody level may be housed in Level IV or V correctional facilities.

If reclassified at the medium custody level, they will be subject to the following conditions of custody:

- frequent and direct observation;
- unrestricted day movement inside the compound;
- limited night and evening movement;
- access to jobs within the facility; and
- access to all programs inside the perimeter.

Inmates classified at the medium custody level may be housed in Level III, IV, or V correctional facilities.

On December 31, 2002, there were 1,151 individuals serving life sentences in Colorado. Two hundred and eighty-three (283) individuals were serving life without the possibility of parole in a Level III facility (56), Level IV facility (129), or Level V facility (98).

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4. The DOC uses 6 possible custody levels when classifying inmates. They are from the highest to lowest security level: administrative segregation, close, medium, restrictive-minimum, minimum, and reception/diagnostic.

5. There are five possible security levels listed in statute. Level V is the highest security level and Level I is the lowest security level (Section 17-1-104.3, C.R.S.).