

CHAPTER 179

S.B. No. 43

AN ACT

relating to the effect of reversal when a court of appeals or the Court of Criminal Appeals awards a new trial based on errors at a certain stage or certain stages of a trial; amending Article 44.29, Code of Criminal Procedure, 1965, as amended.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Article 44.29, Code of Criminal Procedure, 1965, as amended, is amended to read as follows:

Art. 44.29. EFFECT OF REVERSAL. (a) Where the court of appeals or the Court of Criminal Appeals awards a new trial to the defendant *on the basis of an error in the guilt or innocence stage of the trial or on the basis of errors in both the guilt or innocence stage of the trial and the punishment stage of the trial*, the cause shall stand as it would have stood in case the new trial had been granted by the court below.

(b) *If the court of appeals or the Court of Criminal Appeals awards a new trial to the defendant only on the basis of an error or errors made in the punishment stage of the trial, the cause shall stand as it would have stood in case the new trial had been granted by the court below, except that the court shall commence the new trial as if a finding of guilt had been returned and proceed to the punishment stage of the trial under Subsection (b), Section 2, Article 37.07, of this code. If the defendant elects, the court shall empanel a jury for the sentencing stage of the trial in the same manner as a jury is empaneled by the court for other trials before the court. At the new trial, the court shall allow both the state and the defendant to introduce evidence to show the circumstances of the offense and other evidence as permitted by Section 3 of Article 37.07 of this code.*

(c) *This section does not apply to convictions under Section 19.03 of the Penal Code. In such cases, the cause shall stand as it would have stood in case the new trial had been granted by the court below.*

SECTION 2. Subsection (b), Section 2, Article 37.07, Code of Criminal Procedure, 1965, as amended, is amended to read as follows:

(b) Except as provided in Article 37.071, if a finding of guilty is returned, it shall then be the responsibility of the judge to assess the punishment applicable to the offense; provided, however, that (1) in any criminal action where the jury may recommend probation and the defendant filed his sworn motion for probation before the trial began, and (2) in other cases where the defendant so elects in writing before the commencement of the voir dire examination of the jury panel, the punishment shall be assessed by the same jury, *except as provided in Article 44.29*. If a finding of guilty is returned, the defendant may, with the consent of the attorney for the state, change his election of one who assesses the punishment.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on March 16, 1987, by the following vote: Yeas 28, Nays 0. Passed the House on May 11, 1987, by a non-record vote.

Approved May 26, 1987.

Effective Aug. 31, 1987, 90 days after date of adjournment.