

Cherokee Nation Code Annotated

Title 22: Criminal Procedure

Chapter 14: Verdict

§ 929. Remand for vacation of sentence—New sentencing proceeding—Construction of section

Cite as: 22 CNCA § 929

A. Upon any appeal of a conviction by the defendant, the appellate Court, if it finds prejudicial error in the sentencing proceeding only, may set aside the sentence rendered and remand the case to the trial Court in the jurisdiction in which the defendant was originally sentenced for resentencing. No error in the sentencing proceeding shall result in the reversal of the conviction in a criminal case unless the error directly affected the determination of guilt.

B. When a criminal case is remanded for vacation of a sentence, the Court may:

1. Set the case for a nonjury sentencing proceeding; or
2. If the defendant or the Prosecuting Attorney so requests in writing, impanel a new sentencing jury.

C. If a written request for a jury trial is filed within twenty (20) days of the date of the appellate court order, the trial Court shall impanel a new jury for the purpose of conducting a new sentencing proceeding.

1. All exhibits and a transcript of all testimony and other evidence properly admitted in the prior trial and sentencing shall be admissible in the new sentencing proceeding. Additional relevant evidence may be admitted including testimony of witnesses who testified at the previous trial.

2. The provisions of this section are procedural and shall apply retroactively to any defendant sentenced in this Nation.

D. This section shall not be construed to amend or be in conflict with the provisions of 22 CNCA § 926 and 22 CNCA § 927 relating to assessment of punishment in the original trial proceedings.

Historical Data

LA 10–90, eff. November 13, 1990.