

STATE V. HARRIS, 1994-NMSC-049, 117 N.M. 514, 873 P.2d 260 (S. Ct. 1994)

**STATE OF NEW MEXICO, Plaintiff-Appellee,
vs.
MILES HARRIS, Defendant-Appellant.**

No. 21,211

SUPREME COURT OF NEW MEXICO

1994-NMSC-049, 117 N.M. 514, 873 P.2d 260

April 18, 1994, Filed

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY. H. R. Blackhurst,
District Judge

COUNSEL

Sammy J. Quintana, Chief Public Defender, Susan Gibbs, Assistant Appellate
Defender, Santa Fe, NM, for Defendant-Appellant.

Hon. Tom Udall, Attorney General, Daniel F. Haft, Assistant Attorney General, Santa
Fe, NM, for Plaintiff-Appellee.

JUDGES

FROST, MONTGOMERY, FRANCHINI

AUTHOR: FROST

OPINION

FROST, Justice.

{1} This is a pretrial interlocutory appeal in the prosecution of Defendant-Appellant, Miles Harris. Harris briefed three issues: (I) whether a district court may conduct pretrial death-penalty proportionality review; (II) whether Defendant may present proportionality evidence as facts in mitigation of a death sentence; and (III) whether this Court should revise the standards for conducting proportionality review established in **State v. Garcia**, 99 N.M. 771, 664 P.2d 969, **cert. denied**, 462 U.S. 1112, 77 L. Ed. 2d 1341, 103 S. Ct. 2464 (1983). We affirm the district court on Issue I, decline to address Issues II and III, and remand for trial.

{2} We addressed Issue I in **State v. Wyrostek**, 117 N.M. 514, 873 P.2d 260 (1994) (No. 20, 696). Pursuant to **Wyrostek**, we affirm the district court's denial of Harris's motion to prohibit the State from seeking the death penalty.

{3} Harris's interlocutory appeal is pretrial. He has not yet been convicted. If he is not convicted of first degree murder, this case will never present the issue of whether proportionality evidence can be submitted to the jury as a mitigating circumstance in the death-penalty sentencing phase of trial. Likewise, Issue III will never arise unless Harris receives the death penalty. Therefore, Issues II and III are not ripe for consideration by this Court and our review of them would be premature.

{4} We also note that, as reflected in the record, the district court did not rule on Issue II nor certify it for interlocutory appeal. Additionally, Issue III was not identified in the amended application for interlocutory appeal. This case is remanded to the district court for trial.

{5} IT IS SO ORDERED.

STANLEY F. FROST, Justice

WE CONCUR:

SETH D. MONTGOMERY, Chief Justice

GENE E. FRANCHINI, Justice