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THE SUPREME COURT OF NEW HAMPSHIRE

Original
Case No. 2025-0273
Citation: Petition of Addison, 2026 N.H. 37

PETITION OF MICHAEL ADDISON

Argued: March 26, 2026
Opinion Issued: October 6, 2026

Cohen and Winters, PLLC, of Concord (Jonathan Cohen on the brief), and Wiseman, Schwartz, Cioschi & Trama, of Philadelphia, Pennsylvania (Michael Wiseman and Jon Cioschi on the brief, and Michael Wiseman orally), for the petitioner.

John M. Formella, attorney general (Samuel Garland, deputy solicitor general, and Audriana Mekula, assistant attorney general, on the brief, and Audriana Mekula orally), for the Warden, New Hampshire State Prison.

American Civil Liberties Union of New Hampshire, of Concord (Gilles R. Bissonnette and Henry R. Klementowicz on the brief), and American Civil Liberties Union, of Durham, North Carolina (Brian W. Stull and Megan D. Byrne on the brief), for the American Civil Liberties Union of New Hampshire, the American Civil Liberties Union, James R. Acker, Sandra Babcock, Frank R.

Baumgartner, Eric M. Freedman, Jeffrey Fagan, Samuel Gross, Catherine M. Grosso, Michael L. Radelet, Austin Sarat, and Carol Steiker, as amici curiae.

COUNTWAY, J.

[¶1] This court accepted this petition for original jurisdiction filed pursuant to Supreme Court Rule 11 by the petitioner, Michael Addison, to determine whether he is entitled to a comparative proportionality review of his sentence of death pursuant to RSA 630:5, X and XI(c) (2016). We previously conducted a comparative proportionality review of the petitioner's death sentence pursuant to the same statute. See State v. Addison (Capital Murder - Proportionality Review), 167 N.H. 562, 564, 571-73 (2015) (per curiam). Because we hold that the statute does not authorize successive comparative proportionality reviews, the petition is dismissed.

I. Background

[¶2] In 2008, the petitioner was convicted of capital murder and sentenced to death. See State v. Addison (Capital Murder), 165 N.H. 381, 415-16 (2013) (per curiam). This court reviewed the petitioner's capital murder conviction and death sentence, which included conducting a mandatory appellate review of the petitioner's sentence pursuant to RSA 630:5, X and XI (2016). See id. at 411-12, 653-56; Addison (Capital Murder - Proportionality Review), 167 N.H. at 564, 571-73. Upon completion of that review, we affirmed the petitioner's conviction of capital murder and his death sentence. See Addison (Capital Murder), 165 N.H. at 412, 653-56; Addison (Capital Murder - Proportionality Review), 167 N.H. at 564, 572.

[¶3] In 2016, the petitioner filed a petition for writ of habeas corpus in superior court challenging his conviction and sentence. In 2018, he filed a supplement to, and amendment of, his initial petition. On May 30, 2019, after those filings, New Hampshire repealed the death penalty. See Laws 2019, ch. 42 (eff. May 30, 2019). The repeal "shall apply to persons convicted of capital murder on or after the effective date of this act." Laws 2019, ch. 42:2. Persons convicted of capital murder on or after the effective date of the act "shall be sentenced to imprisonment for life without the possibility for parole." RSA 630:1, III (Supp. 2025); see also Laws 2019, ch. 42:1.

[¶4] In 2020, the petitioner filed a second supplement to, and amendment of, his petition for writ of habeas corpus in superior court arguing that his sentence is unconstitutional as a result of the legislature's decision to repeal the death penalty and, alternatively, seeking a "renewed" comparative proportionality review of his death sentence pursuant to RSA 630:5, X and XI(c). The respondent, the Warden of the New Hampshire State Prison, filed a motion to dismiss. After a hearing, the Superior Court (St. Hilaire, J.)

concluded that this court has exclusive jurisdiction over the statutory comparative proportionality review and, considering our preference for resolving cases on constitutional grounds only when necessary, stayed ruling on the respondent's motion to dismiss pending resolution of the petitioner's statutory claims in this court. See, e.g., In re Guardianship of J.H., 176 N.H. 410, 412 (2024), 2024 N.H. 3, ¶6 ("We follow a strong policy against reaching a constitutional issue in a case that can be decided on a nonconstitutional ground."). The petitioner filed a petition for original jurisdiction in this court. We accepted the case for review.

II. Analysis

[¶5] The sole issue before us is whether the petitioner is entitled to a renewed comparative proportionality review of his death sentence and, if so, whether his sentence is excessive or disproportionate to the penalty imposed in similar cases. See RSA 630:5, X, XI(c). The petitioner argues that because New Hampshire repealed the death penalty after his capital murder conviction and death sentence, his sentence is now excessive and disproportionate. He asserts that, in light of this change in the law after our first review of his death sentence, we must perform a renewed comparative proportionality review of his sentence.

[¶6] The respondent counters that we must dismiss the petition because we previously conducted a comparative proportionality review of the petitioner's death sentence pursuant to RSA 630:5, X and XI(c) and held that the petitioner's sentence is not excessive or disproportionate. See Addison (Capital Murder - Proportionality Review), 167 N.H. at 564, 571-73. The respondent argues that we are not authorized by statute to conduct successive comparative proportionality reviews.

[¶7] Comparative proportionality review is not a constitutional mandate, but, rather, is a creature of statute. Id. at 566; see also State v. Addison, 160 N.H. 732, 779 (2010); RSA 630:5, X, XI(c); Pulley v. Harris, 465 U.S. 37, 50-51 (1984) (holding that comparative proportionality review is not required by the United States Constitution and is not "required in every case in which the death penalty is imposed and the defendant requests it"). Accordingly, our task is to construe RSA 630:5, X and XI(c). See Addison, 160 N.H. at 754. This is a matter of statutory interpretation that we determine de novo. Id. The constitutionality of the statute is not before us. The sole issue before us is one of statutory interpretation.

[¶8] In matters of statutory interpretation, we first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning. State v. Cormiea, 177 N.H. 654, 656 (2025), 2025 N.H. 50, ¶7. We give effect to every word of a statute whenever possible and will not consider what the legislature might have said or add language that the

legislature did not see fit to include. Id. We also construe all parts of a statute together to effectuate its overall purpose. Id. However, we do not construe statutes in isolation; instead, we attempt to construe them in harmony with the overall statutory scheme. Id. We construe provisions of the Criminal Code “according to the fair import of their terms and to promote justice.” RSA 625:3 (2016).

[¶9] RSA 630:5, X provides:

In all cases of capital murder where the death penalty is imposed, the judgment of conviction and the sentence of death shall be subject to automatic review by the supreme court within 60 days after certification by the sentencing court of the entire record unless time is extended for an additional period not to exceed 30 days by the supreme court for good cause shown. Such review by the supreme court shall have priority over all other cases and shall be heard in accordance with rules adopted by said court.

With regard to the death sentence, “the supreme court shall determine . . . [w]hether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.” RSA 630:5, XI(c).

[¶10] Comparative proportionality review under RSA 630:5, XI(c) is one part of the appellate process afforded defendants in this state convicted of capital murder and sentenced to death. Addison, 160 N.H. at 779. Defendants have a right to appeal the merits of the conviction and sentence. Id. Additionally, as part of our mandatory appellate review, RSA 630:5, XI(a) and (b) require that we focus upon the specific jury, evidence, and sentencing verdict in the defendant’s case to determine whether the sentence was supported by the evidence and not imposed under the influence of passion, prejudice, or any other arbitrary factor. See id. at 761, 779-80. RSA 630:5, XI(c) then requires us to take a broader view of the defendant’s case in relation to other sentencing verdicts rendered by juries who have convicted similar defendants of similar crimes to determine whether the sentence is excessive or disproportionate to the penalty imposed in similar cases. See id. at 761, 780. Comparative proportionality review is, thus, the final step in a full appellate process encompassing a defendant’s direct appeal and mandatory appellate review of both the capital murder conviction and the death sentence. Id. at 780.

[¶11] The plain language of RSA 630:5, X mandates an “automatic review” of the conviction and sentence. It does not explicitly authorize successive mandatory appellate “reviews” by this court. See RSA 630:5, X. The use of “review” in its singular form, however, does not necessarily prohibit multiple reviews. This conclusion rests with the legislature’s instruction that

in construing all statutes, “[w]ords importing the singular number may extend and be applied to several persons or things,” RSA 21:3 (2020), “unless such construction would be inconsistent with the manifest intent of the legislature or repugnant to the context of the same statute,” RSA 21:1 (2020).

Accordingly, to determine whether multiple mandatory appellate reviews of a defendant’s capital murder conviction and death sentence are permitted under RSA 630:5, X and XI, including multiple comparative proportionality reviews, see RSA 630:5, XI(c), we must determine whether that “construction would be inconsistent with the manifest intent of the legislature or repugnant to the context of the same statute,” RSA 21:1.

[¶12] Here, the statute provides that in all capital murder cases where the death penalty is imposed, the conviction and sentence shall be subject to “automatic review” by this court within a mandatory time period. RSA 630:5, X. Specifically, RSA 630:5, X provides that the conviction and death sentence “shall be subject to automatic review by the supreme court within 60 days after certification by the sentencing court of the entire record unless time is extended for an additional period not to exceed 30 days by the supreme court for good cause shown.” Id.; see Appeal of Martino, 138 N.H. 612, 615 (1994) (noting that where the legislature has selected the word “shall,” we have generally held the statutory prescription to be mandatory, and construing statute providing that a board shall make a decision within thirty days as providing a mandatory deadline). In addition, RSA 630:5, X provides that our mandatory appellate review “shall have priority over all other cases.”

[¶13] Accordingly, we are required by statute to provide automatic appellate review of a defendant’s capital murder conviction and death sentence within a mandatory timeframe and on a priority basis. See RSA 630:5, X. These statutory requirements are not consistent with permitting successive comparative proportionality reviews, at the request of parties or otherwise. The statute provides that in “all cases of capital murder where the death penalty is imposed,” the conviction and sentence shall be subject to “automatic review” by this court. Id. In other words, RSA 630:5, X requires us to automatically review the conviction and sentence in every case to which the statute applies. See id. It does not give parties the right to request subsequent reviews of the conviction and sentence pursuant to the same statute. See id. Moreover, the statute sets a mandatory time period during which the conviction and sentence will be subject to automatic review, and it would be inconsistent with the mandatory time period set forth in the statute for this court to conduct additional comparative proportionality reviews after this statutory time period has passed. See id. Finally, it would conflict with the purpose of requiring this court to prioritize our mandatory appellate review over all other cases — that being, to expedite our review — if, after we have done so, the parties could simply request more of the same reviews. See id. Thus, considering the mandatory statutory timeframe and the priority consideration owed to our automatic review, it would be “repugnant to the context of the same statute” to

construe RSA 630:5, X and XI as permitting successive comparative proportionality reviews. RSA 21:1; cf. Cormiea, 177 N.H. at 658, 2025 N.H. 50, ¶¶12-15 (applying RSA 21:3 to construe a statute’s language authorizing parties to request “an extension” as permitting parties to request multiple extensions of time because that construction was consistent with the statute as a whole).

[¶14] Further, the legislature stated that the repeal of the death penalty “shall apply to persons convicted of capital murder on or after the effective date of this act.” Laws 2019, ch. 42:2. The petitioner was convicted of capital murder before the effective date of the act, and the repeal therefore does not apply to him. See Addison (Capital Murder), 165 N.H. at 415-16; Laws 2019, ch. 42:2. Thus, construing RSA 630:5, X and XI to permit a successive comparative proportionality review in order to consider the legislature’s repeal of the death penalty in our analysis would be “inconsistent with the manifest intent of the legislature.” RSA 21:1; see Laws 2019, ch. 42:2.

[¶15] As we have previously held, comparative proportionality review is “the final step in a full appellate process encompassing a defendant’s direct appeal and mandatory appellate review of both the capital murder conviction and the death sentence.” Addison, 160 N.H. at 780 (emphases added). If the legislature intended to provide successive comparative proportionality reviews for defendants convicted of capital murder and sentenced to death prior to the effective date of the act repealing the death penalty, it could have included that in the legislation, but it did not. See RSA 630:1, III; Laws 2019, ch. 42. We “will not consider what the legislature might have said or add language that the legislature did not see fit to include.” Cormiea, 177 N.H. at 656, 2025 N.H. 50, ¶7. We hold that, under the plain language of RSA 630:5, X and XI, we are authorized to conduct only one comparative proportionality review as part of our mandatory appellate review of the judgment of conviction and sentence of death. For the foregoing reasons, the petition is dismissed.

Petition dismissed.

DONOVAN and GOULD, JJ., concurred.