

THE DISSENT

The following is the dissenting opinion issued by Justice Marshall J. McComb in the death penalty case.

I do not concur in this court's judgment, but would affirm the ruling of the trial court, for these reasons:

FIRST: The question here involved is now pending before the Supreme Court of the United States, whose decision will be binding upon this court. Therefore, I would not pass upon the merits of the contentions discussed in the foregoing opinion until the decision of the Supreme Court of the United States has been rendered.

SECOND: In my opinion, the death penalty is constitutional, as held by this court in a long line of cases, including eleven decisions handed down within the past three and a half years.

THIRD: Further, the death penalty serves a useful purpose as a deterrent of crimes which result in the death of innocent victims and should therefore not be abolished. An article entitled "A Wistful Goodbye to Capital Punishment" by Donald Atwell Zoll, professor of political science at Arizona State University, published in the Dec. 3, 1971, issue of National Review at pages 1351-1354, convincingly states the reasons it would be wise to retain the death penalty.

FOURTH: Subject to constitutional limitations, the Legislature has the power to prescribe punishment for crime.

As hereinabove indicated, it is my opinion that the death penalty is constitutional, as determined by this court in innumerable cases.

Therefore, since it is the duty of the Legislature or the electorate, and not the judiciary, to decide whether it is sound public policy to empower the imposing of the death penalty, it is my opinion that if a change is to be made, it should be effected through the legislative process or by the people through the initiative process.