

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Dated: November 16, 2005

Docket No. And-03-356
Decision No. 2005 ME 83

STATE OF MAINE

v.

ORDER OF
RECONSIDERATION

CHRISTIAN AVERILL

Panel: SAUFLEY, C.J., and CLIFFORD, DANA, ALEXANDER, CALKINS,
and LEVY, JJ.

PER CURIAM

The State's Motion for Reconsideration is granted insofar as it requests reconsideration of the language in *State v. Schofield*, 2005 ME 82, ¶ 40, --- A.2d ---, ---, relied on in *State v. Averill*, 2005 ME 83, ¶ 10, --- A.2d ---, ---. All other portions of the State's Motion for Reconsideration were previously denied by Order dated August 16, 2005.

Upon reconsideration, the Court amends paragraph 40 of the *Schofield* opinion to read as follows:

[¶40] On remand, Schofield may be sentenced constitutionally within the zero- to twenty-year range without the need for further fact-finding regarding heinousness. If the State recommends a sentence in the upper range, or if the court is inclined to impose such a sentence even in the absence of a recommendation, Schofield must be provided

with the opportunity for a sentencing trial before the fact-finder of her choice (i.e., judge or jury). If she selects a jury, at the beginning of the proceeding, the trial judge should instruct the jury as follows:

You are being asked to make a decision today that will assist me in sentencing Ms. Schofield who has been convicted of the Class A offense of manslaughter.

In imposing sentences, judges are required to look at a number of circumstances concerning the defendant, the victim, and the commission of the crime. One of the circumstances that a jury is required to determine is whether the offense committed by the defendant is among the most heinous crimes committed against a person.

The parties will provide information and testimony from which you can evaluate the offense committed by Ms. Schofield and determine whether it is among the most heinous committed against a person.

ALEXANDER, J., statement of nonconcurrence.

Because I do not believe that the original sentencing was affected by any error of law or that any jury trial is required for sentencing, I do not join this amendment order.