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WICHITA, KAN. – Today the Kansas Supreme Court decided State v. Soto, an appeal arising from the conviction of Defendant Soto for his role in the 2009 murder of Arturo Moreno in Wichita. Following the conviction, the State sought and received a “Hard 50” sentence against the defendant Soto. That hard 50 sentence was imposed by the trial Judge consistent with Kansas law at the time.

Following the Soto trial and sentence, the United Supreme Court ruled in Alyene v. United States, 570 U.S. ____, 133 S.Ct. 2151 (2013), that any facts which increase a defendant’s minimum sentence must be found by a jury, not a judge.

In response to the Alyene decision, Attorney General Derek Schmidt asked and Governor Brownback did call the Kansas Legislature back for special session to pass a “fix” to the Kansas Hard 50 sentencing statute.

Today, the Kansas Supreme Court held in the Soto decision that Allyene applies to the Kansas Hard 50 sentencing procedure and therefore, the hard 50 sentence imposed against Defendant Soto was vacated:

“We conclude that under . . . Alleyne, the statutory procedure for imposing a hard 50 sentence violates the Sixth Amendment because it permits a judge to find by a preponderance of the evidence the existence of one or more aggravating factors necessary to impose an increased mandatory minimum sentence, rather than requiring a jury to find the existence of the aggravating factors beyond a reasonable doubt.” (page 28 of Soto decision).”

The Kansas Supreme Court did **not** determine whether the “fix” passed during the special legislative session last September could be applied to Defendant Soto’s case when it returns to Sedgwick County District Court. The Supreme Court held that this issue was not yet “ripe,” for appellate

determination and therefore declined to issue an “advisory opinion” as to whether the State could resentence Defendant Soto under the new law. Instead, the Court invited the state and the defense to make their arguments to the district judge when the case returns to Sedgwick County.

The Office of the District Attorney will examine any Hard 50 case which is subject to the Alyene decision in light of the “fix” passed during the special legislative session. When appropriate, the state will seek to re-sentence those defendants under the new sentencing structure.

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