No. 17-8599

IN THE
Supreme Court of the United States

LANCE SHOCKLEY,

Petitioners,

v.

CINDY GRIFFITH,

Respondent.

On Petition for Writ of Certiorari to the Missouri Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE

QUESTION PRESENTED

When a defendant invokes the right to a jury trial, the Sixth Amendment requires that a jury, not a court, find every element of the offense, including those facts that make a defendant eligible for a heightened sentence. But once a jury finds those elements, a sentencing judge can then weigh the evidence to determine what sentence within the range of eligible sentences is appropriate. Here, the jury found that Shockley murdered a police officer and that the State proved the existence of three aggravating factors. Those findings made Shockley eligible for the death penalty. The trial court, based on the jury's findings, then assessed the evidence and imposed the death penalty.

Does *Hurst v. Florida*, 136 S. Ct. 616 (2016), abrogate the trial court's authority to assess which of the permissible penalties is appropriate and mandate that a jury must be the one to impose a death sentence?

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INTRODUCTION

Lance Shockley murdered a police officer, Sergeant Carl DeWayne Graham, Jr., by shooting him three times—including once in the face, point blank, with a shotgun. The jury unanimously convicted him of first-degree murder and unanimously found that three aggravating factors applied, making Shockley eligible for the death penalty. But the jury did not unanimously agree on whether to impose a life sentence or the death penalty. So the trial court, after noting that the jury had found all facts necessary to make Shockley eligible for the death penalty, exercised its own judgment to impose the death penalty.

This Court should deny the petition for certiorari because it lacks jurisdiction. After the Missouri Supreme Court affirmed Shockley's death sentence in 2013, Shockley unsuccessfully petitioned for certiorari. Shockley's present petition arises from the denial of his state habeas petition, but the Missouri Supreme Court rejected that petition on state-law procedural grounds.

Shockley's argument on the merits also fails. He relies on this Court's decision in *Hurst v. Florida*. Even if that decision were retroactive, which it is not, Shockley's sentencing complied with *Hurst*. The Sixth Amendment requires only that the jury find all elements of an offense, including those elements that make a defendant eligible for a heightened sentence. The jury did so here.

Shockley also contends that a split in authority exists over whether *Hurst* abrogated the longstanding authority of courts to impose sentences. But the cases on which he relies rest on interpretations of state law, not federal law.

STATEMENT OF THE CASE

I. Factual background

On November 26, 2004, Shockley was driving a pickup truck when he lost control and crashed in a ditch, killing his passenger. *State v. Shockley*, 410 S.W.3d 179, 182 (Mo. 2013). Shockley left the truck and walked to a nearby home to ask for help. *Id.* The couple inside the home went to the truck to check on the passenger, but he was already dead. *Id.* Shockley fled the scene before highway patrol officers arrived. *Id.* at 182–83. Those officers discovered beer cans and a tequila bottle inside the car. *Id.* at 183.

Sergeant Carl DeWayne Graham, the murder victim, was in charge of investigating the crash. *Id.* He spoke with Shockley the night of the crash, but Shockley denied involvement. *Id.* Four months later, Sergeant Graham learned from the couple from whom Shockley sought help that Shockley was the driver. *Id.*

Shockley discovered that Sergeant Graham was on his trail. *Id.* The next day, Shockley obtained Sergeant Graham's address from a friend and staked out Sergeant Graham's home. *Id.* When Sergeant Graham returned home, Shockley ambushed him. First, he shot Sergeant Graham in the back with an assault rifle so powerful that the bullet penetrated Sergeant Graham's Kevlar vest. *Id.* The bullet severed Sergeant Graham's spinal cord, paralyzing him immediately. Shockley then switched weapons, grabbing a shotgun. He walked toward Sergeant Graham and shot him twice, point-blank, with the shotgun—once in the face and once in the shoulder. *Id.*

Later, police officers approached Shockley at work. Shockley "said he knew Sergeant Graham was investigating him for the fatal truck accident and, without prompting, declared that he did not know where Sergeant Graham lived." *Id.* at 184. He then threatened the officers and promised to shoot them if they approached him again without a warrant. *Id.* Shockley also contacted his wife, his grandmother, and his cousin and asked each of them to lie for him to construct an alibi. *Id.* Police arrested Shockley two days later. *Id.*

II. Procedural background

Shockley was charged with first-degree murder for the shooting death of Sergeant Graham. *Id.* At the conclusion of the trial's five-day guilt phase, the jury found Shockley guilty of first-degree murder. *Id.* at 185. At the penalty phase, the jury was instructed that it was required to answer several special interrogatories. *Id.* The jury was first required to state whether it unanimously agreed that at least one statutory aggravating circumstance existed. *Id.* If the jury could not unanimously find beyond a reasonable doubt the existence of one or more statutory aggravator, the jury was required to return a verdict of life without the possibility of parole. *Id.*

If the jury did find at least one aggravator, the jury was next required to determine whether mitigating circumstances outweighed the aggravating circumstances. *Id.* In the event that the jury unanimously agreed that the mitigating circumstances outweighed the aggravators, it was required to return a verdict of life imprisonment without parole. *Id.* But if it could not unanimously agree that the mitigating factors outweighed the aggravating factors, the jury was

instructed to exercise its discretion to determine whether to impose a sentence of death or life imprisonment without parole. *Id.*

The jury unanimously found that the State proved three statutory aggravators beyond a reasonable doubt: that Shockley murdered a police officer because of that officer's exercise of his official duties, that Shockley committed the murder "for the purpose of avoiding or preventing a lawful arrest," and that Shockley committed the murder because Sergeant Graham was a potential witness against him. *Id.* (ellipsis omitted). The jury also did not find that the mitigating circumstances outweighed the aggravators. *Id.* But the jury was unable to agree on whether to impose a sentence of death or of life imprisonment. *Id.*

Because the jury deadlocked on which of the available penalties to impose, the trial court was required to "assess and declare the punishment at life imprisonment . . . or death." *Id.* (quoting Mo. Rev. Stat. § 565.030.4 (2000)). The trial court noted that Shockley was eligible for the death penalty because 1) the jury unanimously found that Shockley was guilty of first-degree murder, 2) the jury unanimously found that the State had proven three statutory aggravators beyond a reasonable doubt, and 3) the jury did not find that the mitigating circumstances outweighed the aggravators. *Id.* at 185–86. Adopting the jury's findings, the court then assessed the evidence and determined that a capital sentence was most appropriate. *Id.*

On direct appeal, Shockley argued that Missouri's sentencing statute permitted the trial court to ignore the jury's determination about whether

aggravating factors existed and whether those factors were outweighed by mitigating factors. Shockley contended that the sentencing statute allowed the trial court to make these determinations *de novo*. But the Missouri Supreme Court unanimously rejected that argument, holding that "[Shockley] misreads the statute." *Id.* at 198. Rather, the trial court could exercise its discretion only if the jury found all the facts necessary to make a defendant eligible for the death sentence but was unable to determine whether to impose the death sentence. *Id.* Shockley petitioned this Court for a writ of certiorari, which this Court denied. *Shockley v. Missouri*, 134 S. Ct. 1282 (2014).

After this Court decided *Hurst v. Florida*, 136 S. Ct. 616 (2016), Shockley filed a motion in the Missouri Supreme Court to recall the mandate. He alleged that Missouri's capital sentencing scheme is unconstitutional under *Hurst*. The Missouri Supreme Court summarily denied Shockley's motion. App. 3a.

On September 26, 2017, Shockley filed a petition for a writ of habeas corpus in the Missouri Supreme Court, again contending that Missouri's capital sentencing scheme is unconstitutional under *Hurst*. The Missouri Supreme Court summarily denied Shockley's petition on November 21, 2017. App. 1a. Because Missouri Supreme Court rules allowed Shockley to file the petition for writ of habeas corpus in the Missouri Supreme Court "in the first instance," Mo. Sup. Ct. R. 91.02(b), no other pertinent state-court decision exists, so this Court cannot "look through" the Missouri Supreme Court's summary denial of the habeas petition. *See Wilson v. Sellers*, 138 S. Ct. 1188, 1193–96 (2018).

REASONS FOR DENYING THE WRIT

The petition for a writ of certiorari should be denied for at least three reasons. First, this Court lacks jurisdiction to review the decision below because Shockley's petition rests on an independent and adequate state-law procedural ground. Second, *Hurst* is not retroactive, and even if it were, Missouri's capital sentencing scheme comports with that decision. And third, no split of authority exists.

I. This Court lacks jurisdiction to review the Missouri Supreme Court's summary denial of Shockley's habeas petition because it rests on an independent and adequate state-law procedural ground.

"This Court lacks jurisdiction to entertain a federal claim on review of a state court judgment if that judgment rests on a state law ground that is both independent of the merits of the federal claim and an adequate basis for the court's decision." *Foster v. Chatman*, 136 S. Ct. 1737, 1745 (2016) (internal quotation marks omitted). In such a case, "resolution of any independent federal ground for the decision could not affect the judgment and would therefore be advisory." *Coleman v. Thompson*, 501 U.S. 722, 729 (1991).

This Court lacks jurisdiction because the habeas petition to the Missouri Supreme Court was procedurally barred under state law. Under Missouri law, habeas petitioners are not permitted to raise claims already rejected in earlier proceedings. *State ex rel. Strong v. Griffith*, 462 S.W.3d 732, 733–34 (Mo. 2015) ("[H]abeas review does not provide 'duplicative and unending challenges to the finality of a judgment,' so it is not appropriate to review claims already raised on

direct appeal or during post-conviction proceedings." (citation omitted)). Shockley raised the same claim in his state habeas petition that he already unsuccessfully litigated on direct appeal, so his claim was procedurally barred under state law. Because the rule in *Strong* is an independent and adequate state-law reason for the denial of Shockley's habeas petition, this Court lacks jurisdiction to review the Missouri Supreme Court's denial of the petition. *Foster*, 136 S. Ct. at 1745.

That the Missouri Supreme Court summarily denied relief does not undermine this conclusion. Federal courts have consistently construed summary denials by the Missouri Supreme Court as resting on Missouri's procedural rules. *See, e.g.*, *Byrd v. Delo*, 942 F.2d 1226, 1231–32 (8th Cir. 1991); *Preston v. Delo*, 100 F.3d 596, 600 (8th Cir. 1996), *cert. denied*, *sub nom.*, *Preston v. Bowersox*, 522 U.S. 943 (1997); *Niederstadt v. Nixon*, 505 F.3d 832, 840 (8th Cir. 2007) (citing *Byrd* with approval). This case also is not one where this Court could "look through" the Missouri Supreme Court's decision to a decision by a lower court because no lower-court decision exists. *See Wilson v. Sellers*, 138 S. Ct. 1188, 1193–96 (2018). Accordingly, because the Missouri Supreme Court's summary denial rested on an independent and adequate state-law ground, this Court lacks jurisdiction to review the petition for writ of certiorari.

II. The Missouri Supreme Court's summary denial of Shockley's petition for a writ of habeas corpus is consistent with this Court's decision in *Hurst*.

Shockley contends that Missouri's capital sentencing statute violates the Sixth and Fourteenth Amendments as interpreted by this Court in *Hurst*, and also the Eighth Amendment. Shockley argues that the statute permits the trial court to

replace the jury's factual findings with its own when imposing a death sentence and that this procedure is unconstitutional. That argument fails for numerous reasons.

First, Shockley's argument fails because this Court cannot overturn a state court's interpretation of its own law. *Montana* v. *Wyoming*, 563 U.S. 368, 377 n.5 (2011). Shockley made the same argument to the Missouri Supreme Court on direct appeal, but that court unanimously rejected it, holding that "[Shockley] misreads the statute." *Shockley*, 410 S.W.3d at 198. The Missouri statutes provide that the jury must find beyond a reasonable doubt the existence of every element necessary to make a defendant eligible for the death penalty. *Id.* The trial court can assess whether a capital sentence is appropriate only if the jury determines that the defendant is eligible for the death penalty but deadlocks on whether to impose it. *Id.* Shockley's contention otherwise relies on an interpretation of state law that the Missouri Supreme Court has expressly rejected.

Second, even if, as Shockley insists, the Missouri Supreme Court violated *Hurst*, the Missouri Supreme Court's decision would still be correct because *Hurst* does not apply retroactively to cases on collateral review. A new rule of constitutional law applies retroactively only if it is a substantive rule or a "watershed rule[] of criminal procedure." *Teague v. Lane*, 489 U.S. 288, 311 (1989). Retroactivity does not apply to an ordinary procedural rule like the one declared in *Hurst*. Every federal court to have considered the issue has held that *Hurst* does not apply retroactively. *In re Coley*, 871 F.3d 455, 457 (6th Cir. 2017); *Ybarra v. Filson*, 869 F.3d 1016, 1032–33 (9th Cir. 2017); *Lambrix v. Sec'y, DOC*, 872 F.3d 1170, 1182

(11th Cir.), *cert. denied sub nom. Lambrix v. Jones*, 138 S. Ct. 312 (2017). The Florida Supreme Court has determined that *Hurst* applies retroactively, but it did so on the basis of state law. *Mosley v. State*, 209 So. 3d 1248, 1276 (Fla. 2016). Shockley exhausted his direct appeals before this Court decided *Hurst*, so the decision does not apply to him.

Third, Shockley's sentencing is consistent with *Hurst*. That decision merely applied this Court's longstanding requirement that juries must find beyond a reasonable doubt all facts necessary to subject a person to a heightened sentencing requirement. *Hurst*, 136 S. Ct. at 621–22 (relying on *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Ring v. Arizona*, 536 U.S. 584 (2002)). The Missouri Supreme Court correctly held that the sentencing scheme complied with this longstanding requirement. *Shockley*, 410 S.W.3d at 198.

Florida's sentencing scheme in *Hurst* failed to comply with the requirements in *Apprendi* and *Ring* because the jury's findings were merely "advisory." *Hurst*, 136 S. Ct. at 622. "The trial court *alone*" had to determine whether a defendant was eligible for the death penalty. *Id.* (emphasis in original); *see also id.* (describing the trial court's role as "central and singular"). The jury was not allowed to "make specific factual findings" that would be "binding on the trial judge." *Id.* (citation omitted).

In contrast, under Missouri's sentencing scheme, as definitively interpreted by the Missouri Supreme Court, the trial court does not have the "central and singular role" the judge had under Florida law. Missouri law makes clear that the

jury must find each fact necessary to make a defendant eligible for a death sentence, and that a trial court can impose a death sentence only after a jury has found all these facts:

> Section 565.030.4 and the other statutory provisions governing death penalty cases require the jury to find a statutory aggravator beyond a reasonable doubt, to consider other aggravating and mitigating circumstances and to determine whether the factors in mitigation outweigh those in aggravation. If the jury finds that the mitigators outweigh the aggravators, it must impose a life sentence. Only if it does not so find does the statute direct the jury then to consider whether a death or life sentence is appropriate. It is solely when the jury is unable to agree on this final step that the statutes allow the jury to return a verdict stating that it is unable to agree on punishment.

S*hockley*, 410 S.W.3d at 198 (internal quotations omitted).

Shockley contends that the jury's fact-findings "disappear" once the jury deadlocks on whether to impose a capital sentence. Pet. 9. In support, Shockley quotes a portion of an earlier Missouri Supreme Court case where the court held that once the jury deadlocks, "the jury's findings simply disappear from the case and the court is to make its own independent findings." Pet. 9 (quoting *State v. Whitfield*, 107 S.W.3d 253, 271 (Mo. 2003)). But Shockley overlooks that the Missouri Supreme Court based that determination on the then-current jury instructions. *State v. McLaughlin*, 265 S.W.3d 257, 264 (Mo. 2008) (construing *Whitfield*). After *Whitfield*, Missouri adopted instructions requiring the jury to issue interrogatories detailing its findings. *Id.* Because of these interrogatories, the Missouri Supreme Court has held that the jury's findings no longer "disappear," and the trial court is bound by those findings. *Id.*; *Shockley*, 410 S.W.3d at 199 n.11 (explaining how the use of interrogatories cured the problem in *Whitfield*).

As soon as the jury found that Shockley had committed first degree murder and that at least one statutory aggravator existed, Shockley became eligible for the death penalty. *Tuilaepa v. California*, 512 U.S. 967, 972 (1994). At that point, the body in charge of sentencing could consider "relevant mitigating evidence" and assess the "defendant's culpability." *Id.* at 973. The sentencing body also was "free to consider a myriad of factors to determine whether death is the appropriate punishment." *California v. Ramos*, 463 U.S. 992, 1008 (1983).

When the jury deadlocked here on whether a death sentence was appropriate, the trial court was allowed to do what courts do in sentencing all the time: assess the defendant's culpability and impose a sentence permitted by the elements the jury had found beyond a reasonable doubt. The Constitution does not force juries to impose sentences for robberies, theft, or any other crime. Trial courts have long been entrusted with that authority, and neither *Hurst* nor any other case creates an exception for the death penalty.

Shockley also argues that the Missouri Supreme Court's decision violates the Eighth Amendment. Shockley asserts that "evolving standards of decency" require certain updated procedures—namely, that the jury, not the judge impose capital sentences. Pet. 16. But that argument fails to understand that the Eighth Amendment is a substantive amendment, not a procedural amendment. "The prohibition of the Eighth Amendment relates to the character of the punishment, and not to the process by which it is imposed." *Ring v. Arizona*, 536 U.S. 584, 610

(2002) (Scalia, J., concurring) (quoting *Gardner v. Florida*, 430 U.S. 349, 371 (1977) (Rehnquist, J., dissenting)).

III. This Court's precedents provide adequate guidance to lower courts, and no conflict of authority exists.

Shockley asserts that state supreme courts in Florida and Delaware are divided with Missouri on how to apply *Hurst*. But he misstates the holdings of those cases and overlooks that the determinations in those cases were made on the basis of state law.

For example, Shockley asserts that the Florida Supreme Court has held that only a jury can make "the ultimate decision of whether the defendant should live or die." Pet. 11. But the decision Shockley cites maintains the judge's role in sentencing. That decision requires that the jury "unanimously find that the aggravating factors outweigh the mitigation" and recommend a sentence. *Hurst v. State*, 202 So. 3d 40, 54, 58 (Fla. 2016) (emphasis omitted), *cert. denied sub nom. Fla. v. Hurst*, 137 S. Ct. 2161 (2017). But the decision also expressly states that after the jury makes these findings, "a sentence of death may be considered *by the judge*." *Id.* (emphasis added).

Moreover, Shockley overlooks that the Florida Supreme Court based its determination on state law. The Florida Supreme Court held that juries must weigh the aggravating and mitigating evidence. But this Court has never required the fact-finder to do so. That determination is a classic exercise of the sentencing function, not the fact-finding function. All that is required is that the jury find beyond a reasonable doubt the facts that make a person eligible for the death

penalty. *Tuilaepa*, 512 U.S. at 972. In the light of this federal authority, the Florida Supreme Court expressly stated that its "holding is founded upon the Florida Constitution." *Hurst*, 202 So. 3d at 54; *see also id.* at 57 ("[T]his Court, in interpreting the Florida Constitution and the rights afforded to persons within this State, may require more protection be afforded criminal defendants than that mandated by the federal Constitution.").

Shockley similarly misstates the Delaware decision on which he relies. That court held that the jury, not a judge, must unanimously determine that the aggravating factors outweigh the mitigating factors. *Rauf v. State*, 145 A.3d 430, 432–33 (Del. 2016) (per curiam). But a concurring opinion encompassing a majority of the judges clarified that this holding was required because a determination of whether the aggravating factors outweighed the mitigating factors was a "factual finding[] *necessary* to impose a death sentence under [the] *state* statute." *Id.* at 487 (Holland, Strine, Seitz, JJ., concurring) (second emphasis added).

Missouri law does not include a similar requirement. It merely includes the requirement that this Court identified in *Tuilaepa*: that the jury find at least one aggravating factor. *Tuilaepa*, 512 U.S. at 972. *Hurst* did not disturb the longstanding rule that a sentencing court may assess the facts and evidence and impose an appropriate sentence so long as the jury has found the facts necessary to make a defendant eligible for a certain sentence. *In re Bohannon v. State,* 222 So.3d 525, 532 (Ala. 2016), *cert. denied,* 137 S. Ct. 831 (2017).

Courts have widely recognized that juries are not required to weigh mitigation evidence against the aggravating circumstances because mitigation facts do not increase the defendant's penalty. *See Grandison v. State*, 889 A.2d 366, 381 (Md. 2005); *Rayford v. State*, 125 S.W.3d 521, 533–34 (Tex. Crim. App. 2003); *Ritchie v. State*, 809 N.E.2d 258, 264–68 (Ind. 2004); *Ex Parte Waldrop*, 859 So. 2d 1181, 1189 (Ala. 2002); *People v. Prieto*, 66 P.3d 1123, 1147 (Cal. 2003); *State v. Gales*, 658 N.W.2d 604, 627–28 (Neb. 2003). When the jury here found that the State proved the existence of three statutory aggravators, Shockley became eligible for the death penalty. Nothing prohibited the trial court from imposing the death penalty at that point.

Missouri's procedure comports with the requirements of federal law as stated by this Court in *Hurst*. There is no conflict on this question, only differing state court decisions regarding different state laws governing capital sentencing. This Court should deny Shockley's petition.

CONCLUSION

The petition for the writ of certiorari should be denied.

Respectfully submitted,

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