
In the Supreme Court of the United States

JOHN SAMUEL GHOBRIAL,

Petitioner,

v.

THE STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

BRIEF IN OPPOSITION

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CAPITAL CASE
QUESTION PRESENTED

Whether the Constitution requires that a California jury that has already found unanimously and beyond a reasonable doubt that the defendant committed an offense whose special characteristics render the crime eligible for the death penalty must also, in order to render a verdict of death, find unanimously and beyond a reasonable doubt that specific aggravating factors exist, that they outweigh mitigating factors, and that death is the appropriate penalty.

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STATEMENT

1. In March 1998, petitioner Ghobrial killed and dismembered 12-year-old Juan Delgado. Pet. App. A13-14. Juan's partial remains were found encased in two concrete cylinders. *Id.* at A14-15. When the body parts were discovered, a trail of cement debris and other items led police to the shed where Ghobrial was living. *Id.* at A15. Inside the shed, police found blood that matched the victim's DNA, cutting implements, and materials used to mix the concrete, as well as the victim's clothing and other personal items. *Id.* at A15. Over a year later, a third cylinder that contained the victim's pelvis was discovered. *Id.* at A15. There were sperm cells inside the victim's anus and rectum. *Id.* at A15.

The State charged Ghobrial with first-degree murder and alleged a "special circumstance" that would make Ghobrial eligible for the death penalty: that the murder was committed during the commission or attempted commission of a lewd and lascivious act on a child under the age of 14. 1 CT 87-88. Ghobrial did not contest his identity as Juan's killer during the guilt phase of his trial, but argued there was insufficient evidence to show the murder was premeditated or that it took place during the commission of a lewd act on a child. Pet. App. A14. The jury found Ghobrial guilty of first-degree murder and found the special circumstance allegation true. Pet. App. A13.

After the presentation of evidence at the subsequent penalty phase of the trial, the jurors were instructed that, in selecting whether Ghobrial would be

punished by death or life imprisonment without parole, they were to “consider, take into account, and be guided by the applicable factors of aggravating and mitigating circumstances”; that the “weighing of aggravating and mitigating circumstances does not mean the mere mechanical counting of factors”; that the jurors were “free to assign whatever moral or sympathetic value you deem appropriate to each and all of the various factors”; and that to “return a judgment of death, each of you must be persuaded that the aggravating circumstances are so substantial in comparison with the mitigating circumstances that it warrants death instead of life without parole.” 11 RT 2805-2806. The jury returned a verdict of death. Pet. App. A13.

2. On direct appeal, the California Supreme Court affirmed Ghobrial’s conviction and death sentence. Pet. App. A13. As relevant here, the court rejected Ghobrial’s claim that California’s capital sentencing scheme is unconstitutional because the jury is not required, before reaching a death verdict, to find beyond a reasonable doubt that an aggravating circumstance exists, that aggravating circumstances outweigh mitigating circumstances, and that death is the appropriate penalty. *Id.* at A35. The court noted that it had repeatedly rejected such claims in the past. *Id.* at A34. The court concluded that “[n]either the federal nor the state Constitution requires that the penalty phase jury find beyond a reasonable doubt that aggravating factors outweigh mitigating factors before determining whether or not to impose a death sentence,” that “the United States Supreme Court’s Sixth Amendment

jurisprudence, including *Apprendi* [*v. New Jersey*, 530 U.S. 466, (2000)], does not demand such a requirement,” and that “[t]he death penalty is not unconstitutional for failing to impose a specific burden of proof as to the existence of aggravating circumstances, the greater weight of aggravating circumstances over mitigating circumstances, or the appropriateness of a death sentence.” *Id.* at A35.

ARGUMENT

Ghobrial argues that California’s death penalty system violates the right to due process guaranteed by the Fifth and Fourteenth Amendments, and the right to a jury trial guaranteed by the Sixth Amendment, because state law does not require the penalty-phase jury to find unanimously and beyond a reasonable doubt that an aggravating factor exists, that aggravation outweighs any mitigating factors, and that aggravating factors are so substantial as to make death the appropriate penalty. Pet. 8-17. This Court has repeatedly denied review in cases presenting the same or similar questions, and there is no reason for a different result here.¹

¹ See, e.g., *Henriquez v. California*, No. 18-5375, *cert. denied*, 139 S. Ct. 261 (2018); *Wall v. California*, No. 17-9525, *cert. denied*, 139 S. Ct. 187 (2018); *Brooks v. California*, No. 17-6237, *cert. denied*, 138 S. Ct. 516 (2017); *Becerrada v. California*, No. 17-5287, *cert. denied*, 138 S. Ct. 242 (2017); *Thompson v. California*, No. 17-5069, *cert. denied*, 138 S. Ct. 201 (2017); *Landry v. California*, No. 16-9001, *cert. denied*, 138 S. Ct. 79 (2017); *Mickel v. California*, No. 16-7840, *cert. denied*, 137 S. Ct. 2214 (2017); *Jackson v. California*, No. 16-7744, *cert. denied*, 137 S. Ct. 1440 (2017); *Rangel v. California*, No. 16-5912, *cert. denied*, 137 S. Ct. 623 (2017); *Johnson v. California*, No. 15-7509, *cert. denied*, 136 S. Ct. 1206 (2016); *Cunningham v. California*, No. 15-7177, *cert.*

1. A California death sentence depends on a two-step process prescribed by California Penal Code Sections 190.1 through 190.9. The first stage involves determining whether the defendant committed first-degree murder. That crime carries three potential penalties under California law: a prison term of 25 years to life with the possibility of parole, a prison term of life without the possibility of parole, or death. Cal. Penal Code § 190(a). The penalties of death or life without parole may be imposed only if one or more statutorily enumerated special circumstances “has been found under Section 190.4 to be true.” *Id.* § 190.2(a). The defendant is entitled to a jury determination of such a special circumstance, and the jury’s finding of a special circumstance must be made unanimously and beyond a reasonable doubt. *Id.* § 190.4(a), (b). During the first stage of Ghobrial’s trial, the jury found him guilty of first-degree murder and also found true the special circumstance allegation that he murdered the victim during the commission of a lewd act on a child under the age of 14. Pet. App. A13. The jury’s findings were made

denied, 136 S. Ct. 989 (2016); *Lucas v. California*, No. 14-9137, *cert. denied*, 135 S. Ct. 2384 (2015); *Boyce v. California*, No. 14-7581, *cert. denied*, 135 S. Ct. 1428 (2015); *DeBose v. California*, No. 14-6617, *cert. denied*, 135 S. Ct. 760 (2014); *Blacksher v. California*, No. 11-7741, *cert. denied*, 565 U.S. 1209 (2012); *Taylor v. California*, No. 10-6299, *cert. denied*, 562 U.S. 1013 (2010); *Bramit v. California*, No. 09-6735, *cert. denied*, 558 U.S. 1031 (2009); *Morgan v. California*, No. 07-9024, *cert. denied*, 552 U.S. 1286 (2008); *Cook v. California*, No. 07-5690, *cert. denied*, 552 U.S. 976 (2007); *Huggins v. California*, No. 06-6060, *cert. denied*, 549 U.S. 998 (2006); *Harrison v. California*, No. 05-5232, *cert. denied*, 546 U.S. 890 (2005); *Smith v. California*, No. 03-6862, *cert. denied*, 540 U.S. 1163 (2004); *Prieto v. California*, No. 03-6422, *cert. denied*, 540 U.S. 1008 (2003).

unanimously and beyond a reasonable doubt. 2 CT 484-485; 9 RT 2013-2014, 2021-2022, 2040-2042.

The second stage of California's death penalty process proceeds under California Penal Code Section 190.3. The jury hears evidence during a penalty trial, allowing it to consider evidence "as to any matter relevant to aggravation, mitigation, and sentence, including but not limited to" certain specified topics. Cal. Penal Code § 190.3. "In determining the penalty," the jury must "take into account any" of a list of specified factors "if relevant"—including "[a]ny . . . circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime." *Id.* With the exception of prior unadjudicated violent criminal activity and prior felony convictions, the jury need not agree unanimously on the existence of a particular aggravating circumstance, or find the existence of such a circumstance beyond a reasonable doubt. *See People v. Romero*, 62 Cal. 4th 1, 56 (2015); *People v. Gonzales*, 52 Cal. 4th 254, 328 (2011). If the jury "concludes that the aggravating circumstances outweigh the mitigating circumstances," then it "shall impose a sentence of death." Cal. Penal Code § 190.3. If it "determines that the mitigating circumstances outweigh the aggravating circumstances," then it "shall impose a sentence of confinement in state prison for a term of life without the possibility of parole." *Id.*

2. Ghobrial contends that he could not constitutionally be sentenced to death unless the jury during the penalty phase found, unanimously and beyond

a reasonable doubt, that a particular aggravating factor existed, that the aggravating circumstances outweighed those in mitigation, and that the aggravating circumstances were so substantial as to make death the appropriate penalty. Pet. 8-17. That is incorrect.

Ghobrial primarily relies on the Sixth and Fourteenth Amendment rule that, “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); *see also Ring v. Arizona*, 536 U.S. 584 (2002) (applying rule to Arizona death penalty). Pet. 8-9. But under California law, once a jury finds unanimously and beyond a reasonable doubt that a defendant has committed first-degree murder with a special circumstance, the maximum potential penalty prescribed by statute is death. *See People v. Prince*, 40 Cal. 4th 1179, 1297-1298 (2007); *see generally Tuilaepa v. California*, 512 U.S. 967, 975 (1994) (a California defendant becomes “eligible for the death penalty when the jury finds him guilty of first-degree murder and finds one of the § 190.2 special circumstances true”). Imposing that maximum penalty on a defendant in these circumstances thus does not violate the Constitution.

In arguing to the contrary, Ghobrial relies on *Hurst v. Florida*, 136 S. Ct. 616, 619-622 (2016). Pet. 9-14. Under the Florida system considered in *Hurst*, after a jury verdict of first-degree murder, a convicted defendant was not “eligible for death,” 136 S. Ct. at 622, unless the judge further determined that

an enumerated “aggravating circumstance[] exist[ed],” Fla. Stat. § 921.141(3). The judge was thus tasked with making the “findings upon which the sentence of death [was] based,” 136 S. Ct. at 622 (quoting Fla. Stat. § 921.141(3))—determinations that were essentially questions of fact, *see id.* § 921.141(5) (listing aggravating circumstances, such as whether the crime was committed with a purpose of pecuniary gain). This Court held that Florida’s system thus suffered from the same constitutional flaw that Arizona’s had in *Ring*: “The maximum punishment” a defendant could receive without judge-made findings “was life in prison without parole,” and the judge “increased” that punishment “based on [the judge’s] own factfinding.” 136 S. Ct. at 621.

In California, however, what makes a person eligible for a death sentence is the jury’s determination that at least one of the special circumstances in Penal Code Section 190.2(a) is present. That determination, which (absent a guilty plea) the jury must agree on unanimously and beyond a reasonable doubt, is how California fulfills the “constitutionally necessary function” of “circumscrib[ing] the class of persons eligible for the death penalty.” *Zant v. Stephens*, 462 U.S. 862, 878 (1983).

The jury’s subsequent consideration of aggravating and mitigating factors at the penalty phase fulfills a different function: that of providing an “individualized determination . . . at the selection stage” of who among the eligible defendants deserves the death penalty. *Zant*, 462 U.S. at 879; *see People v. Moon*, 37 Cal. 4th 1, 40 (2005) (“The penalty jury’s principal task is

the moral endeavor of deciding whether the death sentence should be imposed on a defendant who has already been determined to be ‘death eligible’ as a result of the findings and verdict reached at the guilt phase.”). Such a determination involves a choice between a greater or lesser authorized penalty—not any increase in the maximum potential penalty. *See Jones v. United States*, 526 U.S. 227, 249 (1999).

Kansas v. Carr, 136 S. Ct. 633 (2016), effectively forecloses Ghobrial’s argument (Pet. 11) that determinations concerning the existence of aggravating or mitigating factors at this final selection stage must be made beyond a reasonable doubt. As *Carr* reasoned, it is possible to apply a standard of proof to the “eligibility phase” of a capital sentencing proceeding, “because that is a purely factual determination.” *Id.* at 642. In contrast, it is doubtful whether it would even be “possible to apply a standard of proof to the mitigating-factor determination (the so-called ‘selection phase’ of a capital-sentencing proceeding),” because “[w]hether mitigation exists . . . is largely a judgment call (or perhaps a value call): what one juror might consider mitigating another might not.” *Id.*; *see also, e.g., People v. Brown*, 46 Cal. 3d 432, 456 (1988) (California’s sentencing factor regarding “[t]he age of the defendant at the time of the crime” may be either a mitigating or an aggravating factor in the same case: the defendant may argue for age-based mitigation, and the prosecutor may argue for aggravation because the defendant was “old enough to know better”).

Carr likewise forecloses Ghobrial's argument (Pet. 11) that the jury's final weighing of aggravating versus mitigating circumstances should proceed under the beyond-a-reasonable-doubt standard. In *Carr*, this Court observed that "the ultimate question of whether mitigating circumstances outweigh aggravating circumstances is mostly a question of mercy," and "[i]t would mean nothing . . . to tell the jury that the defendants must deserve mercy beyond a reasonable doubt." 136 S. Ct. at 642. That reasoning leaves no room for Ghobrial's argument that the Constitution requires such determinations to be made beyond a reasonable doubt. Pet. 11-19.

3. Ghobrial points to the Delaware Supreme Court's fractured decision in *Rauf v. State*, 145 A.3d 430 (Del. 2016), as reason for this Court to consider whether the beyond-a-reasonable-doubt standard should apply at California's selection stage. Pet. 13-14. *Rauf's* various opinions hold that a determination as to the relative weight of aggravating and mitigating standards in the application of Delaware's death penalty must be made beyond a reasonable doubt. See 145 A.3d at 434 (per curiam); *id.* at 481-482 (Strine, J., concurring); *id.* at 487 (Holland, J., concurring); *but see id.* at 487 (Valihura, J., dissenting). The rationale of those opinions is not clear, and they notably fail to cite or discuss this Court's reasoning on the issue in *Carr*. In any event, the most notable feature of the Delaware law invalidated in *Rauf* was that the jury's choice between a life sentence and death was completely advisory: The judge could impose a sentence of death even if all jurors recommended against it, as

long as the jury had unanimously found the existence of a single aggravating factor. See Del. Code tit. 11, § 4209(c)(3), (d)(1); *Rauf*, 145 A.3d at 457 (Strine, J., concurring) (under Delaware law the judge “has the final say in deciding whether a capital defendant is sentenced to death and need not give any particular weight to the jury’s view”). Under California law, the death penalty may be imposed only if the jury has unanimously voted for death. See Cal. Penal Code § 190.3. It is by no means clear from the opinions in *Rauf* that that court would have reached the same result if it had considered California’s quite different statute.²

Ghobrial also relies on the Florida Supreme Court’s decision in *Hurst v. State*, 202 So. 3d 40, 57 (Fla. 2016). Pet. 13. *Hurst* holds that a death sentence under Florida law may not be constitutionally imposed unless the jury “unanimously and expressly find[s] all the aggravating factors that were

² Similar shortcomings undercut petitioner’s reliance on the opinion dissenting from the denial of certiorari in *Woodward v. Alabama*, 571 U.S. 1045, 134 S. Ct. 405, 410-411 (2013), and on *State v. Whitfield*, 107 S.W. 3d 253 (Mo. 2003). Pet. 13-144. The statutes at issue in *Woodward* and *Whitfield* allowed a judge to impose the death penalty even where the jurors voted against it. See *Woodward*, 134 S. Ct. at 406, 410-412 (jury’s decision as to whether the defendant should be executed was merely an “advisory verdict”); *Whitfield*, 107 S.W. 3d at 261-262 (judge imposed death sentence after jurors voted 11-1 for life imprisonment). The *Woodward* dissent suggests that a trial judge’s view should not replace that of the jury—not that the death penalty may not be imposed without the jury finding beyond a reasonable doubt that aggravating factors outweigh mitigating factors. 134 S. Ct. at 410-411. To whatever extent *Whitfield* held that the beyond-a-reasonable doubt standard should apply to aggravating and mitigating factors, that ruling has been superseded by this Court’s analysis in *Carr*.


proven beyond a reasonable doubt, unanimously find[s] that the aggravating factors are sufficient to impose death, unanimously find[s] that the aggravating factors outweigh the mitigating circumstances, and unanimously recommend[s] a sentence of death.” 202 So. 3d at 57. By its own terms, the decision does not recognize a right to a beyond-a-reasonable-doubt determination of anything other than the existence of aggravating factors—the Florida-law equivalent of the special circumstances that a California jury must find beyond a reasonable doubt under California law when determining eligibility for a death sentence. See Pet. 8-9. The Florida Supreme Court’s decision in *Hurst* thus provides no reason for further review.

CONCLUSION

The petition for a writ of certiorari should be denied.

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