No. 19-967

IN THE
Supreme Court of the United States

CRAIG M. WOOD,
Petitioner,

v.

STATE OF MISSOURI,
Respondent.

On Petition for a Writ of Certiorari
To the Eighth Circuit Court of Appeals

BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTION PRESENTED

Whether the Constitution requires that a jury, rather than a judge, weigh the aggravating and mitigating circumstances to determine whether a defendant should be sentenced to death.

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INTRODUCTION

Craig Wood kidnapped, raped, and murdered a ten-year-old girl, Hailey Owens. A jury unanimously convicted him of first-degree murder and unanimously found—beyond reasonable doubt—that six aggravating factors applied, making Wood eligible for the death penalty. The trial court, after noting the jury had found all the facts necessary to make Wood death eligible, weighed the aggravating and mitigating factors and imposed the death penalty. Wood asserts that only the jury can engage in the weighing process during sentencing, but he is mistaken, and the Court should deny review.

This Court recently resolved the very question raised by Wood's petition and confirmed the Missouri Supreme Court was correct. *McKinney v. Arizona*, 589 U.S. __ (2020) (slip op., at 4-5). "In short, *Ring* and *Hurst* did not require jury weighing of aggravating and mitigating circumstances." *Id*. at 5. The trial judge, therefore, is free to conduct that weighing process.

Even before *McKinney*, at least seven federal circuit courts and thirteen state courts of last resort had already come to the same conclusion. Aggravating circumstances must go to a jury and be determined beyond a reasonable doubt because they increase the statutory maximum and make the defendant eligible for the death penalty. The weighing of aggravating and mitigating circumstances, however, is part of the sentence selection process, and so does not have to go to a jury and does not have to be decided beyond a reasonable doubt. There is no contrary authority. The few cases Wood cites rest on state statutory grounds, not constitutional grounds, and *McKinney* authoritatively resolved any possible split.

STATEMENT

The penalty phase of a first-degree murder trial in Missouri is governed by Missouri Revised Statutes § 565.030. Under that statute, a defendant becomes "eligible for the death sentence only when the jury finds at least one statutory aggravating circumstance beyond a reasonable doubt." Pet. App. 24a (citing Mo. Rev. Stat. § 565.030.4(2)).

Sentencing then moves into the selection phase. Once a jury finds one or more aggravating circumstances, "the jury proceeds to the weighing step, and must impose a life sentence if it 'concludes' evidence in mitigation outweighs the evidence in aggravation." *Id*. (quoting Mo. Rev. Stat. § 565.030.4(3)). If mitigating evidence does not outweigh aggravating circumstances, "the jury 'decides' whether to 'assess and declare the punishment at death.'" *Id*. (quoting Mo. Rev. Stat. § 565.030.4(4)). "If the jury deadlocks on punishment, the circuit court determines punishment by following 'the same procedure as set out in this section.'" *Id*. (quoting Mo. Rev. Stat. § 565.030.4).

I. Wood kidnapped, raped, and murdered ten-year-old Hailey Owens.

In 2014, Craig Wood kidnapped, raped, and murdered a ten-year-old girl, Hailey Owens. Pet. App. 2a. As Hailey was walking down the sidewalk near her home, witnesses saw a tan Ford Ranger drive past her, turn around, and pull alongside her. Wood opened the door, lunged at Hailey, pulled her into the truck, and sped off at high speed. *Id.* Witnesses got his license number and called the police. *Id.* When police caught up with Wood's vehicle a few hours later, Wood was carrying duct tape and smelled of bleach. Going inside, the police noticed a strong odor of bleach emanating from the basement. *Id.* at 3a. The

basement steps and floor were wet, a fan was running, a scrap of duct tape was on the floor, and there were empty bleach bottles and plastic storage tubs. *Id.* In the basement, police found Hailey's unclothed body wrapped in black plastic bags and stuffed into a plastic tub. *Id.* Her body was wet and smelled of bleach. *Id.* Her lips, cheek, and ear were bruised. *Id.* Ligature marks showed her wrists had been tied and she had struggled to free herself. *Id.* A .22-caliber shell casing lay on the basement floor, fired from a rifle later found in a storage room. *Id.* The autopsy showed Hailey had died from a gunshot wound to the back of the neck, killed by a .22-caliber bullet. *Id.* Her body was lacerated and bruised in a manner consistent with sexual assault. *Id.* Video surveillance captured Wood placing Hailey's clothes in a dumpster behind a nearby strip mall. *Id.* at 4a. After trial, a Missouri jury found Wood guilty of murder in the first degree. *Id.* at 5a.

II. Wood became eligible for the death penalty after a jury found many aggravating circumstances.

At the sentencing stage, the State sought the death penalty. After hearing evidence, the jury found the following aggravating circumstances:

- The murder of Hailey involved torture and depravity; that the defendant killed Hailey after she was bound or otherwise rendered helpless by the defendant, and the defendant thereby exhibited a callous disregard for the sanctity of human life.
- That the defendant's selection of the person he killed was random and without regard to the victim's identity and that defendant's killing of Hailey thereby exhibited a callous disregard for the sanctity of human life.

- The murder of Hailey was committed for the purpose of avoiding arrest.
- The murder of Hailey was committed while the defendant was engaged in rape.
- The murder of Hailey was committed while the defendant was engaged in sodomy.
- The murder of Hailey was committed while the defendant was engaged in kidnapping.
- Hailey was a witness or potential witness of a pending investigation of the kidnapping of Hailey.

Id. at 6a-7a; *see also* Mo. Rev. Stat. § 565.032.2. The jury found each aggravating circumstance unanimously and beyond a reasonable doubt. *Id.* at 7a. The jury deadlocked when it turned to selecting a sentence, however, leaving the selection of a sentence to the trial court. *Id.*

III. A Missouri judge sentenced Wood to death and the Missouri Supreme Court affirmed.

The trial court sentenced Wood to the statutory maximum—capital punishment. The court cited the aggravating circumstances found by the jury and the other "factual findings of the jury as set forth in its verdict as to punishment." Pet. App. 7a. It then determined "the facts and circumstances in mitigation of punishment were not sufficient to outweigh facts and circumstances in aggravation of punishment." *Id.* The Court then determined that death was the appropriate sentence. *Id.*

The Missouri Supreme Court affirmed. The court explained that, under Missouri's statute, a defendant becomes eligible for the death penalty once the jury finds one or more aggravating circumstances. *Id.* at 24a-27a. It rejected Wood's argument "that the weighing step is a factual finding constitutionally entrusted to the jury." *Id.* at 27a. The weighing step

does not go to eligibility, the court explained, so it does not have to be decided by a jury. *Id.* at 27a-30a. Moreover, weighing is not a finding of *fact*, but a judgment call. Pet. App. 32a ("Neither a jury nor a judge can prove or disprove a conclusion the evidence on one side outweighs the evidence on the other.").

Wood's petition to this Court followed.

REASONS FOR DENYING THE PETITION

I. *McKinney* definitively answered the question presented in Wood's petition and confirmed that the Missouri Supreme Court was correct.

"[A]ny 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" (other than the fact of a prior conviction). *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). Applying this principle in the capital context, "a jury must find every *fact* necessary to render" a defendant "*eligible* for the death penalty." *Hurst v. Florida*, 136 S. Ct. 616, 622 (2016) (emphasis added); *Ring v. Arizona*, 536 U.S. 584, 589 (2002). This means that, "[u]nder *Ring* and *Hurst*, a jury must find the aggravating circumstance that makes the defendant death eligible." *McKinney v. Arizona*, 589 U.S. __ (2020) (slip op., at 4).

Wood's petition asserts that the Sixth Amendment also requires juries in capital cases to weigh mitigating and aggravating factors. Pet. 10-19. He is mistaken. "[I]n a capital sentencing proceeding just as in an ordinary sentencing proceeding, a jury (as opposed to a judge) is not constitutionally required to weigh the aggravating and mitigating circumstances or to make the ultimate sentencing decision within the relevant statutory range." *McKinney*, 589 U.S. at

__ (slip op. 4-5). Indeed, *Apprendi* "carefully avoided any suggestion that 'it is impermissible for judges to exercise discretion . . . in imposing a judgment *within the range* prescribed by statute.'" *McKinney*, 589 U.S. at __ (slip op. 5) (quoting *Apprendi*, 530 U.S. at 481). "And in the death penalty context, . . . the decision in *Ring* 'has nothing to do with jury sentencing. What today's decision says is that the jury must find the existence of the fact that an aggravating factor existed.'" *Id.* (quoting *Ring*, 536 U. S. at 612 (Scalia, J., concurring) and citing *Kansas v. Carr*, 136 S. Ct. 633, 642 (2016)). Thus, "the 'States that leave the ultimate life-or-death decision to the judge may continue to do so.'" *Id.* (quoting *Ring*, 536 U. S. at 612).

After *McKinney*, the question presented by Wood's petition has been answered, confirming the Missouri Supreme Court was correct. Missouri typically leaves the ultimate life-or-death decision to the jury, but when the jury cannot reach a decision, that decision is made by the judge. Pet. App. 24a (citing Mo. Rev. Stat. § 565.030.4). Nothing in *Ring* or *Hurst* prevents Missouri from following this process. The Court should deny review.

II. Even before *McKinney*, recent decisions all agreed that *Ring* and *Hurst* only require the jury to find facts that make a defendant eligible for the death penalty.

Even before *McKinney*, the lower courts agreed that the weighing process is not *factfinding* and does not determine *eligibility* for a capital sentence—at least under most death-penalty statutes, including Missouri's. As to the purported split alleged in the petition, all courts agree that *Hurst* and *Ring* only require the jury to find facts that make a defendant eligible for the death penalty. Only one or two courts

have suggested weighing is a part of determining eligibility, and those rulings are based on atypical state statutes that are unlike Missouri's statute. *McKinney*, moreover, resolves any potential split.

A. A jury determines eligibility for a capital sentence, but need not select the sentence.

As in all sentencing decisions, there are "two different aspects of the capital decision-making process: the eligibility decision and the selection decision." *Tuilaepa v. California*, 512 U.S. 967, 971 (1994).

A jury must make the eligibility decision. Thus, in a capital jury trial, the Sixth Amendment requires that the jury find the facts that make a defendant eligible for the death penalty. This is so because such facts increase the potential maximum punishment for the offense. *Hurst*, 136 S. Ct. at 619 ("The Sixth Amendment requires a jury . . . to find each fact necessary to impose a sentence of death"); *Ring*, 536 U.S. at 589 ("[C]apital defendants, no less than noncapital defendants . . . are entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment."); *see also Blakely v. Washington*, 542 U.S. 296, 309 (2004) (noting "the jury's traditional function of finding the facts essential to lawful imposition of the penalty"); *Apprendi*, 530 U.S. at 483 (noting juries must find facts that "expose the defendant to a greater punishment than that authorized by the jury's guilty verdict").

A judge, however, may make the selection decision. Capital punishment acts like a statutory maximum. *See Ring*, 536 U.S. at 592 (describing a death sentence as a "statutory maximum penalty for first-degree murder"). Once a jury determines the facts necessary

to make a defendant eligible for that statutory maximum, then either the judge or the jury may determine a defendant's specific sentence at or below that statutory maximum. This Court "has never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range." *United States v. Booker*, 543 U.S. 220, 233 (2005). The selection decision requires the sentencer to take into account "the character of the individual and the circumstances of the crime" and "relevant mitigating evidence." *Tuilaepa*, 512 U.S. at 972. Weighing mitigating factors falls squarely in this territory. *See Carr*, 136 S. Ct. at 642; *Brown v. Sanders*, 546 U.S. 212, 216 (2006) ("Once the narrowing requirement has been satisfied, the sentencer is called upon to determine whether a defendant thus found eligible for the death penalty should in fact receive it").

For these reasons, "[n]early every court that has considered the issue has held that the Sixth Amendment is applicable to only the fact-bound eligibility decision concerning an offender's guilt of the principal offense and any aggravating circumstances." *State v. Mason*, 108 N.E.3d 56, 64 (Ohio 2018); *McKinney*, 589 U.S. at __ (slip op. 5) ("In short, *Ring* and *Hurst* did not require jury weighing of aggravating and mitigating circumstances").

B. The federal circuits all agree that the weighing process is not a constitutional prerequisite to death eligibility.

Weighing aggravating and mitigating factors typically is not part of determining eligibility, at least under federal law and the laws of most states. Consistent with this reading, all seven federal circuits to consider the question have held that the weighing process is not a constitutional prerequisite to death

eligibility. Under federal law, the jury determines whether mitigating factors outweigh aggravating factors. Some defendants have tried to argue that this weighing process is a prerequisite to death eligibility and so must be found beyond a reasonable doubt as a "fact" that increases a defendant's maximum sentence under *Apprendi*, *Ring*, and *Hurst*. *See Apprendi*, 530 U.S. at 490.

The federal circuits have unanimously rejected this argument. The process of weighing aggravating and mitigating factors "is not a finding of fact in support of a particular sentence" but "a determination of *the sentence itself*, within a range for which the defendant is already eligible." *United States v. Gabrion*, 719 F.3d 511, 533 (6th Cir. 2013) (en banc). Indeed, if *Ring* and *Hurst* applied to mitigating factors and the weighing process, then those "facts" would "need to be found by the grand jury and charged in the indictment." *United States v. Mitchell*, 502 F.3d 931, 993-94 (9th Cir. 2007). "This illustrates the flaw in [Wood's] position, for of course the grand jury has no way of knowing what mitigating factors the defendant will urge." *Id.* at 994. All seven federal circuits to consider the question have reached the same conclusion. *See United States v. Runyon*, 707 F.3d 475, 516 (4th Cir. 2013); *Gabrion*, 719 F.3d at 533; *United States v. Fields*, 516 F.3d 923, 950 (10th Cir. 2008); *Mitchell*, 502 F.3d at 993–94; *United States v. Sampson*, 486 F.3d 13, 31 (1st Cir. 2007); *United States v. Fields*, 483 F.3d 313, 345–46 (5th Cir. 2007); *United States v. Purkey*, 428 F.3d 738, 749 (8th Cir. 2005) ("It makes no sense to speak of the weighing process . . . as an elemental fact").

Even before *McKinney*, this Court had signaled its agreement. In *Carr*, for example, the Court explained that the weighing process is not factfinding. "[W]e

doubt whether it is even possible to apply a standard of proof to the mitigating-factor determination." 136 S. Ct. at 642. "The facts justifying death" (*i.e.*, aggravating circumstances) "either did or did not exist—and one can require the finding that they did exist to be made beyond a reasonable doubt." *Id.* "*Whether mitigation exists, however, is largely a judgment call. . . .* And of course the ultimate question whether mitigating circumstances outweigh aggravating circumstances is mostly a question of mercy." *Id.* (emphasis added). In sum, the weighing process is *not* factfinding and goes to the sentencing selection process, not death eligibility. The weighing process provides potential grounds for reducing a sentence within the statutory range, but does not increase the statutory maximum. Again, this Court "has never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range." *Booker*, 543 U.S. at 233. The Court expressly affirmed all this once more in *McKinney*. 589 U.S. at __ (slip op. 4-5).

Wood emphasizes that many death penalty jurisdictions require a jury to weigh the aggravating and mitigating circumstances. Pet. 14-15. But even if this were true, these federal circuit cases show that Wood is asking the wrong question for purposes of *Ring* and *Hurst*. The federal death penalty statute requires a jury to weigh the aggravating and mitigating circumstances too. But this is a statutory requirement, not a constitutional one. *Apprendi* requires both jury factfinding *and* a beyond-reasonable-doubt standard. Wood has not pointed to even one jurisdiction that impose both requirements at the weighing stage.

C. At least thirteen state courts of last resort agree that *Ring* and *Hurst* do not apply to the weighing process.

Wood concedes that six state courts of last resort all agree that *Ring* and *Hurst* do not apply to weighing aggravating and mitigating factors. Pet. 15-19. The number is actually at least thirteen: Alabama, California, Florida, Illinois, Indiana, Maryland, Missouri, Nebraska, Nevada, New Mexico, Ohio, Pennsylvania, and Texas. *State v. Poole*, No. SC18-245, 2020 WL 370302 (Fl. Jan. 23, 2020); *Commonwealth v. Le*, 208 A.3d 960, 980 (Pa. 2019); *State v. Jenkins*, 931 N.W.2d 851, 880 (Neb. 2019); *Mason*, 108 N.E.3d at 64 (Ohio 2018); *Ex parte Bohannon*, 222 So. 3d 525, 533 (Ala. 2016); *Nunnery v. State*, 263 P.3d 235, 250 (Nev. 2011); *People v. Banks*, 934 N.E.2d 435, 469-70 (Ill. 2010); State *v. Fry*, 126 P.3d 516, 531-32 (N.M. 2006); *State v. Barker*, 826 N.E.2d 648, 649 (Ind. 2005); *Oken v. State*, 835 A.2d 1105, 1128 (Md. 2003); *Rayford v. State*, 125 S.W.3d 521, 533–34 (Tex. Crim. App. 2003); *People v. Prieto*, 66 P.3d 1123, 1147 (Cal. 2003).

D. Wood misreads the purportedly contrary decisions he relies on.

Wood cites three cases that purportedly disagree with this overwhelming consensus among state and federal courts that weighing does not have to be part of the eligibility decision. Pet. 11-14. A closer look, however, shows that Wood misstates the holdings in those cases and overlooks their reliance on atypical state statutes that are different than Missouri's.

Wood relies on the Arizona ruling on remand in *Ring*, but that case is entirely statutory. *State v. Ring*, 65 P.3d 915 (Ariz. 2003). As the petition admits, "the Arizona legislature enacted a new capital sentencing

statute that required juries to both find aggravating circumstances and balance them against mitigating circumstances." Pet. 13 (citing Ariz. Rev. Stat. § 13-752). Arizona is free to assign this task to the jury. But weighing goes to the jury in Arizona for statutory reasons, not constitutional reasons. Wood also points to the Arizona Supreme Court's retroactivity ruling after this Court decided *Ring*. But that retroactivity ruling was not about weighing. Under Arizona's old statute, the judge was required "to determine the presence or absence of the enumerated 'aggravating circumstances.'" *Ring*, 536 U.S. at 592. This Court struck down this element of Arizona's sentencing scheme in *Ring* because it "entrusts to a judge the finding of a fact raising the defendant's maximum penalty." *Id.* at 595. On remand, the Arizona Supreme Court considered whether defendants needed to be resentenced if at least one aggravating factor "was implicitly found by the jury or it was otherwise obvious." *Ring*, 65 P.3d at 942. The Court refused to make these implicit findings for two reasons. First, it believed this Court's decision in *Ring* "requires a jury to consider all aggravating factors urged by the state" not just some. *Id.* at 942-43. Second, it noted that the retroactivity proposal was not authorized by either the old statute or the new statute. *Id.* at 943 ("the procedures urged by the State do not reflect any sentencing procedure ever adopted by our legislature"). Neither rationale addresses weighing—the question at issue here.

The Colorado ruling cited by Wood was simply a straightforward application of *Ring* followed by some statutory commentary. *See Woldt v. People*, 64 P.3d 256 (Col. 2003). Colorado entrusted the penalty phase of a capital trial to a three-judge panel and required the judges "to find at least one statutory aggravating factor beyond a reasonable doubt." *Id.* at 265.

Because this violated *Ring*'s express holding, the Colorado statute was unconstitutional on its face. *Id.* at 266. The Colorado court also opined, in dicta, that the Colorado statute required judges to decide "whether the mitigating factors outweighed the aggravating factors" and made this requirement a "prerequisite[] to a finding . . . that the defendant was eligible for death." *Id.* at 265. To the degree the Colorado statute made the judges' weighing process a prerequisite to *eligibility*, it violated *Ring* by not sending that decision to a jury. *Id.* at 266. This language was only dicta. Moreover, it is consistent with all the cases cited above because it relies on the same rule: "*Ring* holds that death penalty eligibility fact-finding belongs solely to the jury." *Id.* at 266.[1] Unlike the Colorado statute, Missouri's statute does not make the weighing process a prerequisite to eligibility.

The Delaware ruling is also a straightforward application of *Ring*. *See Rauf v. State*, 145 A.3d 430 (Del. 2016). In *Rauf*, the Delaware Supreme Court responded to a request from the judge in a pending trial to answer a series of certified questions about Delaware's capital sentencing statute. Delaware's capital sentencing scheme, the court said, allowed the sentencing judge to find aggravating circumstances. *Id.* at 433. That violated *Ring* and *Hurst*. *Id*. The Delaware statute also mimicked Florida's insofar as it allowed the trial judge to override a jury's recommendation of a life sentence. *Id.* at 461 (Strine, C.J., concurring). Missouri's statute, by contrast, does not allow for either of these things. The Delaware

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[1] *Woldt*'s dicta is about a statute that is no longer on the books. The current scheme is different. *See* Col. Rev. Stat. 18-1.3-1201(2).

court went on to opine that the Sixth Amendment requires Delaware juries to find that aggravating circumstances outweigh mitigating circumstances and that the jury must make this weighing finding beyond a reasonable doubt. *Id.* at 434. A majority of the court suggested that this dicta turned on the atypical language of Delaware's statute. *Id.* at 487 (Holland, Strine, Seitz, JJ. concurring) (noting the ruling was necessary because the weighing process was a "factual finding[] *necessary* to impose a death sentence under [the] *state* statute") (emphasis added). To the degree the Delaware opinion suggested the Sixth Amendment *always* requires the weighing process to go to a jury and be decided beyond a reasonable doubt, *Rauf* is plainly wrong. *McKinney*, 589 U.S. at __ (slip. Op. 4-5).

As these cases show, Wood's purported split turns on state statutory language, not constitutional differences. The Missouri Supreme Court's reading of its own statute is authoritative and binding. This Court does not grant certiorari to second-guess a state court's interpretation of a state statute. Sup. Ct. Rule 10.

Wood also briefly alludes to the Eighth Amendment, although his petition does not raise it as a separate ground. Pet. 30-33. That argument also fails. 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*, 536 U.S. at 610 (Scalia, J., concurring) (quoting *Gardner v. Florida*, 430 U.S. 349, 371 (1977) (Rehnquist, J., dissenting)). Wood's Eighth Amendment position, moreover, was rejected by this Court in *Carr*, 136 S. Ct. at 642.

III. This case is a poor vehicle.

This case also presents a poor vehicle to address the question presented for at least two reasons.

First, Wood's petition rests on an interpretation of state law that the Missouri Supreme Court has expressly rejected. Wood's petition suggests that Missouri law makes the weighing process a prerequisite to determining death-penalty eligibility. Pet. at *i*; *see also id.* at 24-25. This fundamentally misconstrues Missouri law as definitively interpreted by the Missouri Supreme Court. This Court cannot overturn a state court's interpretation of its own law. *See Montana v. Wyoming*, 563 U.S. 368, 377 n.5 (2011). Unlike the statutes at issue in *Woldt* and *Rauf* that Wood relies on, the weighing process is not part of determining death-penalty eligibility in Missouri. Pet. App. 31a-32a. Even if it were, the Sixth Amendment would not apply because weighing is not a finding of fact. But, at any rate, that question is not presented by the Missouri statute at issue here.

Second, the jury in Wood's case found multiple aggravating circumstances beyond a reasonable doubt. Pet. App. at 6a-7a. This is not a case where the jury "deadlocked" about death-penalty eligibility or gave only an advisory opinion, as Wood suggests. Pet. 22, 26-27. The jury clearly and unanimously, beyond a reasonable doubt, found six different statutory aggravating circumstances—any one of which was sufficient to make Wood eligible for the death penalty. These findings did not disappear or become advisory when the jury handed the case back to the court. Rather, the trial court's sentencing decision rested squarely on the *jury's* finding that Wood was eligible for the death penalty. Pet. App. 7a. That is precisely what the constitution requires.

CONCLUSION

The Court should deny the petition for writ of certiorari.

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