No. 24-5916

In the Supreme Court of the United States

JAVANCE MICKEY WILSON,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

BRIEF IN OPPOSITION

ROB BONTA
Attorney General of California
MICHAEL J. MONGAN
Solicitor General
JAMES WILLIAM BILDERBACK II
Senior Assistant Attorney General
JOSHUA A. KLEIN
Deputy Solicitor General
HOLLY D. WILKENS
Supervising Deputy Attorney General
DONALD W. OSTERTAG*
Deputy Attorney General

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
(619) 738-9557
Donald.Ostertag@doj.ca.gov
**Counsel of Record*

December 4, 2024

CAPITAL CASE
QUESTION PRESENTED

Whether a California jury that has already found unanimously and beyond a reasonable doubt that the defendant committed first degree murder and that special circumstances exist that render him eligible for the death penalty must also, in order to return a penalty verdict of death, find beyond a reasonable doubt that specific aggravating factors exist, and that those aggravating factors outweigh the mitigating circumstances.

DIRECTLY RELATED PROCEEDINGS

California Supreme Court:

People v. Wilson, No. S118775 (judgment entered August 5, 2024) (this case below)

In re Wilson, No. S285836 (pending) (habeas corpus)

San Bernardino County Superior Court:

People v. Wilson, No. FVA-012968 (judgment entered August 27, 2003) (this case below)

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

CONSTITUTIONAL PROVISIONS

STATEMENT

Petitioner Javance Mickey Wilson robbed and murdered two taxi drivers. *See* Pet. App. A 2. He had earlier robbed and attempted to murder another taxi driver. *Id.* His petition challenges his sentence of death.

1. On January 7, 2000, petitioner called for a taxi to pick him up from a grocery store in San Bernardino, California. Pet. App. A 2. The driver who arrived to pick up petitioner was James Richards, and petitioner had Richards drive him to a rural, dimly lit road. *Id.* Once there, petitioner pointed a gun at Richards and robbed him. *Id.* After forcing Richards out of the taxicab and onto his knees, petitioner put his gun into Richards's mouth and pulled the trigger. *Id.* But the gun malfunctioned, and Richards was able to escape to a nearby house. *Id.* Petitioner took Richards's taxicab and fled the scene. *Id.* at 2-3. The stolen taxi was found next to petitioner's apartment. *Id.* at 2-3. Richards provided a description of petitioner to the police, and later identified petitioner in a photo lineup. *Id.* at 2-3.

On February 20, 2000, petitioner again called for a taxicab to pick him up from a grocery store. Pet. App. A 4. This time, the driver who arrived was Andres Dominguez, and petitioner had Dominguez drive him to the same road where he had previously robbed and attempted to murder Richards. *Id.* Petitioner took Dominguez's cell phone and other belongings, and shot and killed him. *Id.* at 4-5.

Later that night, petitioner used Dominguez's cell phone to request another taxicab. Pet. App. A 4. The driver who arrived was Victor Henderson, whom petitioner also shot and killed. *Id.*

2. At the guilt phase of petitioner's trial, the jury convicted him of the robbery, carjacking, and attempted murder of Richards; the first-degree murder and robbery of Dominguez; and the first-degree murder and attempted robbery of Henderson. Pet. App. A 1. The jury found true, beyond a reasonable doubt, the special circumstances that Dominguez and Henderson were murdered during the commission or attempted commission of robbery, and that petitioner committed multiple murders. *Id.* Those special-circumstance findings qualified petitioner for the death penalty under California law. *Id.*; *see* Cal. Penal Code § 190.2.

At the penalty phase, the prosecutor focused on petitioner's prior killing of an individual with whom he had a drug sale transaction, petitioner's prior assault of an individual whom he had threatened to kill, and petitioner's threats to a courtroom deputy during his trial. Pet. App. A 9. The defense focused on petitioner's childhood and alleged cognitive limitations. *Id.* The court instructed that in choosing whether petitioner should be punished by death or by life imprisonment without parole, jurors were to "consider, take into account and be guided by the applicable factors of aggravating and mitigating circumstances"; that they 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." 22 RT 5913-5914.[1] The jury returned a verdict of death. Pet. App. A 1.

3. The California Supreme Court affirmed. Pet. App A 1-115. As relevant here, petitioner claimed that California's death penalty scheme is constitutionally deficient because it does not require the jury, at the penalty phase, to apply the beyond-a-reasonable-doubt standard when determining the existence and weight of aggravating and mitigating factors as part of selecting a death sentence for a person whom they found eligible for it at the guilt-phase. Pet. 7-8. The court rejected the argument based on its prior decision in *People v. Jones*, 3 Cal. 5th 583, 618-619 (2017). Pet. App A 81-82.[2]

ARGUMENT

Petitioner argues that California's death penalty system violates the Fifth, Sixth, and Fourteenth Amendments because state law does not require the penalty-phase jury to find the existence of aggravating factors beyond a reasonable doubt, or to find beyond a reasonable doubt that those aggravating factors outweigh the mitigating factors. Pet. 3-6, 9-19. This Court has

---

[1] RT refers to the Reporter's Transcript; CT refers to the Clerk's Transcript.

[2] Two justices dissented, based on a claim separate from the one at issue in this petition. *See* Pet. App. A (Evans, J., dissenting) (arguing that court should have stayed petitioner's direct appeal to allow development of certain statutory claims rather than requiring petitioner to add those claims to his pending habeas corpus petition).

repeatedly denied review in cases presenting the same or similar questions, and there is no reason for a different result here.[3]

1. A California death sentence depends on a two-stage process prescribed by California Penal Code Sections 190.1 through 190.9. At the first stage, the

---

[3] *See, e.g.*, *Miranda-Guerrero v. California*, 144 S. Ct. 115 (2023) (No. 22-7373); *Ramirez v. California*, 143 S. Ct. 1027 (2023) (No. 22-6445); *Pineda v. California*, 143 S. Ct. 1005 (2023) (No. 22-6514); *Mataele v. California*, 143 S. Ct. 751 (2023) (No. 22-6088); *Bracamontes v. California*, 143 S. Ct. 739 (2023) (No. 22-6071); *Poore v. California*, 143 S. Ct. 494 (2022) (No. 22-5695); *Gonzalez v. California*, 142 S. Ct. 2719 (2022) (No. 21-7296); *Scully v. California*, 142 S.Ct. 1153 (2022) (No. 21-6669); *Johnsen v. California*, 142 S. Ct. 353 (2021) (No. 21-5012); *Vargas v. California*, 141 S. Ct. 1411 (2021) (No. 20-6633); *Caro v. California*, 140 S. Ct. 2682 (2020) (No. 19-7649); *Mitchell v. California*, 140 S. Ct. 2535 (2020) (No. 19-7429); *Capers v. California*, 140 S. Ct. 2532 (2020) (No. 19-7379); *Erskine v. California*, 140 S. Ct. 602 (2019) (No. 19-6235); *Mendez v. California*, 140 S. Ct. 471 (2019) (No. 19-5933); *Bell v. California*, 140 S. Ct. 294 (2019) (No. 19-5394); *Gomez v. California*, 140 S. Ct. 120 (2019) (No. 18-9698); *Case v. California*, 139 S. Ct. 1342 (2019) (No. 18-7457); *Penunuri v. California*, 586 U.S. 1053 (2018) (No. 18-6262); *Henriquez v. California*, 586 U.S. 897 (2018) (No. 18-5375); *Wall v. California*, 586 U.S. 865 (2018) (No. 17-9525); *Brooks v. California*, 583 U.S. 1019 (2017) (No. 17-6237); *Becerrada v. California*, 583 U.S. 889 (2017) (No. 17-5287); *Thompson v. California*, 538 U.S. 878 (2017) (No. 17-5069); *Landry v. California*, 583 U.S. 834 (2017) (No. 16-9001); *Mickel v. California*, 581 U.S. 1019 (2017) (No. 16-7840); *Jackson v. California*, 581 U.S. 907 (2017) (No. 16-7744); *Rangel v. California*, 580 U.S. 1057 (2017) (No. 16-5912); *Johnson v. California*, 577 U.S. 1158 (2016) (No. 15-7509); *Cunningham v. California*, 577 U.S. 1123 (2016) (No. 15-7177); *Lucas v. California*, 575 U.S. 1041 (2015) (No. 14-9137); *Boyce v. California*, 574 U.S. 1169 (2015) (No. 14-7581); *DeBose v. California*, 574 U.S. 1051 (2014) (No. 14-6617); *Blacksher v. California*, 565 U.S. 1209 (2012) (No. 11-7741); *Taylor v. California*, 562 U.S. 1013 (2010) (No. 10-6299); *Bramit v. California*, 558 U.S. 1031 (2009) (No. 09- 6735); *Morgan v. California*, 552 U.S. 1286 (2008) (No. 07-9024); *Cook v. California*, 552 U.S. 976 (2007) (No. 07-5690); *Huggins v. California*, 549 U.S. 998 (2006) (No. 06-6060); *Harrison v. California*, 546 U.S. 890 (2005) (No. 05-5232); *Smith v. California*, 540 U.S. 1163 (2004) (No. 03-6862); *Prieto v. California*, 540 U.S. 1008 (2003) (No. 03-6422).

guilt phase, the jury initially determines whether the defendant committed first degree murder. Under California law, that crime carries three potential penalties: 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 default sentence is a prison term of 25 years to life. The penalties of death or life without parole may be imposed only if, in addition to finding the defendant guilty of first-degree murder, the jury also finds true one or more statutorily enumerated special circumstances. *Id.* §§ 190.2(a), 190.4. The jury's findings on these special circumstances are also made during the guilt phase of a capital defendant's trial, and a "true" finding must be unanimous and beyond a reasonable doubt. *Id.* § 190.4(a), (b).

During the guilt phase of petitioner's trial, the jury found him guilty of two counts of first-degree murder and found the robbery-murder and multiple-murder special circumstance allegations to be true. Pet. App. A 1. The jury's findings were unanimous and made under the beyond-a-reasonable-doubt standard. 5 CT 1453, 1485-1487.

The second stage of California's death penalty trial process, the penalty phase, proceeds under California Penal Code Section 190.3. During the penalty phase, the jury hears evidence that it is allowed to consider "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 "[t]he circumstances of the crime of which the defendant was convicted" and "[a]ny . . . circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime." *Id.* The jury need not agree unanimously on the existence of a particular aggravating circumstance, nor must it find the existence of such a circumstance beyond a reasonable doubt (with the exception of prior unadjudicated violent criminal activity and prior felony convictions). *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. Petitioner contends California's capital sentencing statute is unconstitutional because it does not require the jury during the penalty phase to find the existence of an aggravating factor beyond a reasonable doubt, or to find that the aggravating factors outweigh the mitigating factors beyond a reasonable doubt. Pet. 9-19. But the Constitution does not impose such requirements. In support of his contentions, petitioner primarily relies (*see* Pet. 9) on the Sixth and Fourteenth Amendment rule that "[i]f a State makes an increase in a defendant's authorized punishment contingent on the finding of a fact, that fact—no matter how the State labels it—must be found by a jury

beyond a reasonable doubt." *Ring v. Arizona*, 536 U.S. 584, 602 (2002) (applying rule to Arizona death penalty); *see also Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). California law is consistent with this rule because once a jury finds unanimously and beyond a reasonable doubt that a defendant has committed first degree murder with a special circumstance, the maximum 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, 971-972 (1994) ("To render a defendant eligible for the death penalty in a homicide case, we have indicated that the trier of fact must convict the defendant of murder and find one 'aggravating circumstance' (or its equivalent) at either the guilt or penalty phase"). Imposing that maximum penalty on a defendant once these jury determinations have been made unanimously and beyond a reasonable doubt thus does not violate the Constitution.

In arguing to the contrary, petitioner cites *Hurst v. Florida*, 577 U.S. 92, 94-95, 98, 100 (2016). Pet. 9-17. Under the Florida system considered in *Hurst*, after a jury verdict of first-degree murder, a convicted defendant was not "eligible for death," 577 U.S. at 99-100, 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,'" *Hurst*, 577 U.S. at 96 (quoting Fla. Stat. § 921.141(3))—determinations that were essentially questions of fact, *see* Fla. Stat. § 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 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." *Hurst*, 577 U.S. at 99.

In contrast, under California law, a defendant is eligible for a death sentence once the jury finds true at least one of the special circumstances in California Penal Code Section 190.2(a). *See McKinney v. Arizona*, 589 U.S. 139, 144 (2020) ("Under *Ring* and *Hurst*, a jury must find the aggravating circumstance that makes the defendant death eligible."). That determination, which the jury must agree on unanimously and beyond a reasonable doubt, is part of 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, 577 U.S. 108 (2016), effectively forecloses any argument that determinations concerning the existence of aggravating or mitigating factors at the penalty selection phase 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 119. 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, 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").

This Court further 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." *Carr*, 577 U.S. at 119. That reasoning leaves no room for petitioner's argument that the Constitution requires a capital sentencing jury to determine the relative weight of the aggravating and mitigating factors beyond a reasonable doubt.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

ROB BONTA
Attorney General of California
MICHAEL J. MONGAN
Solicitor General
JAMES WILLIAM BILDERBACK II
Senior Assistant Attorney General
JOSHUA A. KLEIN
Deputy Solicitor General
HOLLY D. WILKENS
Supervising Deputy Attorney General
DONALD W. OSTERTAG
Deputy Attorney General
Counsel of Record for Respondent

December 4, 2024