

O2-1603 BEARD v. BANKS

Ruling below: CA 3, 316 F.3d 228

QUESTIONS PRESENTED

1. Does this Court's decision in *Mills v. Maryland*, 486 U.S. 367 (1988), constitute a new rule of law that cannot be applied retroactively to award sentencing relief to a prisoner whose conviction became final before *Mills* was announced?

(Answered in the negative by the United States Court of Appeals for the Third Circuit.)

2. If *Mills* applies retroactively, where a state supreme court has rejected a *Mills* challenge because neither the trial court's instructions nor the verdict form advised the jury that it must be unanimous as to the existence of mitigating circumstances and, to the contrary, made clear that unanimity was required only to find aggravating circumstances and to impose a sentence of death, is that decision a reasonable application of this Court's precedent?

(Answered in the negative by the United States Court of Appeals for the Third Circuit.)

CERT. GRANTED: 9/30/03