

**03-9560 HOWELL V. MISSISSIPPI**

DECISION BELOW: 860 So2d 704

LOWER COURT CASE NUMBER: 2001-DP-01104-SCT

**QUESTION PRESENTED:**

Can a state court, consistent with the Eighth and Fourteenth Amendments to the Constitution of the United States, refuse to instruct a jury in a death penalty case on at least one lesser included offense that is recognized in state law and supported by the evidence?

IN ADDITION TO THE QUESTION PRESENTED BY THE PETITION, THE PARTIES ARE DIRECTED TO BRIEF AND ARGUE THE FOLLOWING QUESTION: "Was petitioner's federal constitutional claim properly raised before the Mississippi Supreme Court for purposes of 28 U.S.C. Sec. 1257?"

DISMISSED AS IMPROVIDENTLY GRANTED.

CERT. GRANTED 6/28/2004