
In the Supreme Court of the United States

EDUARDO DAVID VARGAS,

Petitioner,

v.

THE STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO 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 first-degree murder and that the murder involved a special circumstance that renders the crime eligible for the death penalty must also, in order to render a verdict of death, find beyond a reasonable doubt that specific aggravating factors exist.

DIRECTLY RELATED PROCEEDINGS

California Supreme Court:

People v. Vargas, No. S101247, judgment entered July 13, 2020 (this case below).

Orange County Superior Court:

People v. Vargas, No. 99CF0831, judgment entered October 4, 2001 (this case below).

TABLE OF CONTENTS

	Page
Statement	1
Argument.....	3
Conclusion.....	9

TABLE OF AUTHORITIES

Page

CASES

<i>Apprendi v. New Jersey</i> 530 U.S. 466 (2000)	6
<i>Becerrada v. California</i> No. 17-5287, <i>cert denied</i> , 138 S. Ct. 242 (2017)	3
<i>Bell v. California</i> No. 19-5394, <i>cert. denied</i> , 140 S. Ct. 120 (2019)	3
<i>Blacksher v. California</i> No. 11-7741, <i>cert. denied</i> , 565 U.S. 1209 (2012)	3
<i>Boyce v. California</i> No. 14-7581, <i>cert. denied</i> , 135 S. Ct. 1428 (2015)	3
<i>Bramit v. California</i> No. 09-6735, <i>cert. denied</i> , 558 U.S. 1031 (2009)	4
<i>Brooks v. California</i> No. 17-6237, <i>cert. denied</i> , 138 S. Ct. 516 (2017)	3
<i>Capers v. California</i> No. 19-7379, <i>cert. denied</i> , 140 S. Ct. 2532 (2020)	3
<i>Caro v. California</i> No. 19-7649, <i>cert. denied</i> , 140 S. Ct. 2682 (2020)	3
<i>Case v. California</i> No. 18-7457, <i>cert. denied</i> , 139 S. Ct. 1342 (2019)	3
<i>Cook v. California</i> No. 07-5690, <i>cert. denied</i> , 552 U.S. 976 (2007)	4
<i>Cunningham v. California</i> No. 15-7177, <i>cert denied</i> , 136 S. Ct. 989 (2016)	3
<i>Dalton v. California</i> 19-5977, <i>cert. denied</i> , 140 S. Ct. 505 (2019)	3
<i>DeBose v. California</i> No. 14-6617, <i>cert. denied</i> , 574 U.S. 1051 (2014)	3

TABLE OF AUTHORITIES
(continued)

	Page
<i>Erskine v. California</i>	
No. 19-6235, <i>cert. denied</i> , 140 S. Ct. 602 (2019)	3
<i>Flores v. California</i>	
No. 19-8081, <i>cert. denied</i> , 140 S. Ct. 2783 (2020)	3
<i>Gomez v. California</i>	
No. 18-9698, <i>cert. denied</i> , 140 S. Ct. 294 (2019)	3
<i>Harrison v. California</i>	
No. 05-5232, <i>cert. denied</i> , 546 U.S. 890 (2005)	4
<i>Henriquez v. California</i>	
No. 18-5375, <i>cert. denied</i> , 139 S. Ct. 261 (2018)	3
<i>Huggins v. California</i>	
No. 06-6060, <i>cert. denied</i> , 549 U.S. 998 (2006)	4
<i>Hurst v. Florida</i>	
136 S. Ct. 616 (2016)	6
<i>Jackson v. California</i>	
No. 16-7744, <i>cert. denied</i> , 137 S. Ct. 1440 (2017)	3
<i>Johnson v. California</i>	
No. 15-7509, <i>cert. denied</i> , 136 S. Ct. 1206 (2016)	3
<i>Jones v. United States</i>	
526 U.S. 227 (1999)	8
<i>Kansas v. Carr</i>	
136 S. Ct. 633 (2016)	8, 9
<i>Landry v. California</i>	
No. 16-9001, <i>cert. denied</i> , 138 S. Ct. 79 (2017)	3
<i>Lucas v. California</i>	
No. 14-9137, <i>cert. denied</i> , 135 S. Ct. 2384 (2015)	3
<i>Mendez v. California</i>	
No. 19-5933, <i>cert. denied</i> , 140 S. Ct. 471 (2019)	3
<i>Mickel v. California</i>	
No. 16-7840, <i>cert. denied</i> , 137 S. Ct. 2214 (2017)	3

TABLE OF AUTHORITIES
(continued)

	Page
<i>Mitchell v. California</i>	
No. 19-7429, <i>cert. denied</i> , 140 S. Ct. 2535 (2020)	3
<i>Morgan v. California</i>	
No. 07-9024, <i>cert. denied</i> , 552 U.S. 1286 (2008)	4
<i>Penunuri v. California</i>	
No. 18-6262, <i>cert. denied</i> , 139 S. Ct. 644 (2018)	3
<i>People v. Brown</i>	
46 Cal. 3d 432 (1988)	8
<i>People v. Gonzales</i>	
52 Cal. 4th 254 (2011).....	5
<i>People v. Moon</i>	
37 Cal. 4th 1 (2005).....	7
<i>People v. Prince</i>	
40 Cal. 4th 1179 (2007).....	6
<i>People v. Romero</i>	
62 Cal. 4th 1 (2015).....	5
<i>Prieto v. California</i>	
No. 03-6422, <i>cert. denied</i> , 540 U.S. 1008 (2003)	4
<i>Rangel v. California</i>	
No. 16-5912, <i>cert. denied</i> , 137 S. Ct. 623 (2017)	3
<i>Ring v. Arizona</i>	
536 U.S. 584 (2002)	6, 7
<i>Smith v. California</i>	
No. 03-6862, <i>cert. denied</i> , 540 U.S. 1163 (2004)	4
<i>Taylor v. California</i>	
No. 10-6299, <i>cert. denied</i> , 562 U.S. 1013 (2010)	3
<i>Thompson v. California</i>	
No. 17-5069, <i>cert. denied</i> , 138 S. Ct. 201 (2017)	3
<i>Tuilaepa v. California</i>	
512 U.S. 967, 975 (1994)	6

TABLE OF AUTHORITIES
(continued)

	Page
<i>Wall v. California</i>	
No. 17-9525, <i>cert. denied</i> , 139 S. Ct. 187 (2018)	3
<i>Zant v. Stephens</i>	
462 U.S. 862 (1983)	7
STATUTES	
California Penal Code	
§ 186.22(a)	1
§ 186.22(b)(1)	2
§ 187(a)	1
§ 190(a)	4
§ 190.1 through 190.9.....	4, 5, 6
§ 190.2(a)	4, 7
§ 190.2(a)(17)(A)	1
§ 190.4(a)	4
§ 190.4(b)	4
§ 211.....	1
§ 212.5(c).....	1
§ 213(a)(2)	1
§ 664.....	1
§ 12021(d)	1
§ 12022.53(b)	2
§ 12022.53(d)	2
§ 12022.53(e)(1)	2
Florida Statute	
§ 921.141(3)	6, 7
§ 921.141(5)	7
CONSTITUTIONAL PROVISIONS	
United States Constitution	
Fifth Amendment.....	3
Sixth Amendment	3
Fourteenth Amendment	3, 6

STATEMENT

1. On March 30, 1999, and April 1, 1999, Petitioner Eduardo Vargas and two fellow Southside Santa Ana gang members, Matthew Miller and Eloy Gonzalez, committed a series of armed robberies. Pet. App. B 2-6. In the course of the last of these robberies, Vargas shot Jesse Muro Jr. twice in the back of the head, fatally wounding him. *Id.* at 5-6. Bullets and shell casings recovered from the murder scene matched a firearm in Vargas's possession. *Id.* at 10. Vargas's palm print was lifted from a vehicle near where Muro was shot. *Id.*

At the trial's guilt phase, the jury found Vargas guilty of first-degree murder and also found true beyond a reasonable doubt the special circumstance allegation that Vargas committed the murder while engaged in the commission of robbery. Pet. App. B 1; *see* Cal. Penal Code §§ 187(a), 190.2(a)(17)(A). The jury also found Vargas guilty of robbery, attempted robbery, active participation in a criminal street gang, and possessing a firearm while on probation. Pet. App. B 1; *see* Cal. Penal Code §§ 186.22(a), 211, 212.5(c), 213(a)(2), 664, 12021(d). The jury further found true allegations that Vargas personally discharged a firearm causing death during the robbery murder, and that the crimes were committed with the intent to promote a

criminal street gang. Pet. App. B 1; *see* Cal. Penal Code §§ 186.22(b)(1), 12022.53(b), (d), (e)(1). Pet. App. B 1; 3 CT 785-813, 849-854.¹

At the trial’s penalty phase, the jurors were instructed that, in deciding whether Vargas would be punished by death or life in prison without parole, they were to “consider, take into account and be guided by” various aggravating and mitigating circumstances that might apply; that the “weighing of aggravating and mitigating circumstances does not mean a mere mechanical counting of factors”; 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.” 3 CT 880-82. The jury returned a verdict of death. Pet. App. B 1.

2. The California Supreme Court affirmed the convictions and death sentence. Pet. App. B 1. As relevant here, the court rejected Vargas’s claim that California’s capital sentencing scheme is unconstitutional because it does not require findings beyond a reasonable doubt that an aggravating circumstance has been proved, that the aggravating factors outweigh the mitigating factors, or that death is the appropriate sentence. *Id.* at 64.

¹ “CT” refers to the trial court’s Clerk’s Transcript.

ARGUMENT

Vargas argues that California’s capital-sentencing scheme violates his right to due process guaranteed by the Fifth and Fourteenth Amendments, and his right to a jury trial guaranteed by the Sixth Amendment, because state law does not require the penalty-phase jury to find beyond a reasonable doubt that an aggravating factor exists. Pet. 14-18. This Court has repeatedly denied review in cases presenting the same or similar questions, and there is no reason for a different result here.²

² See, e.g., *Flores v. California*, No. 19-8081, *cert. denied*, 140 S. Ct. 2783 (2020); *Caro v. California*, No. 19-7649, *cert. denied*, 140 S. Ct. 2682 (2020); *Mitchell v. California*, No. 19-7429, *cert. denied*, 140 S. Ct. 2535 (2020); *Capers v. California*, No. 19-7379, *cert. denied*, 140 S. Ct. 2532 (2020); *Erskine v. California*, No. 19-6235, *cert. denied*, 140 S. Ct. 602 (2019); *Dalton v. California*, 19-5977, *cert. denied*, 140 S. Ct. 505 (2019); *Mendez v. California*, No. 19-5933, *cert. denied*, 140 S. Ct. 471 (2019); *Bell v. California*, No. 19-5394, *cert. denied*, 140 S. Ct. 120 (2019); *Gomez v. California*, No. 18-9698, *cert. denied*, 140 S. Ct. 294 (2019); *Case v. California*, No. 18-7457, *cert. denied*, 139 S. Ct. 1342 (2019); *Penunuri v. California*, No. 18-6262, *cert. denied*, 139 S. Ct. 644 (2018); *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. 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*, 574 U.S. 1051 (2014); *Blacksher v. California*, No. 11-7741, *cert. denied*, 565 U.S. 1209 (2012); *Taylor v. California*, No. 10-6299, *cert. denied*,

1. A California death sentence depends on a two-stage process prescribed by California Penal Code Sections 190.1 through 190.9. The first stage, the guilt phase, 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 default sentence is a prison term of 25 years to life. 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.” Cal. Penal Code § 190.2(a). A 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. Cal. Penal Code § 190.4(a), (b). During the guilt phase of Vargas’s trial, the jury found him guilty of first-degree murder, and found true the robbery-murder special circumstance. Pet. App. B 1; 3 CT 785-786. The jury’s findings were unanimous and made under the beyond-a-reasonable-doubt standard. 2 CT 657, 671, 674, 681, 686, 690, 691.

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).

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 which 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 “[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, with the exception of prior unadjudicated violent criminal activity and prior felony convictions, 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. Vargas contends that the Constitution does not permit him to be sentenced to death unless the jury during the penalty phase found beyond a reasonable doubt the existence of aggravating factors. Pet. 10. That is incorrect.

Vargas primarily relies (Pet. 11-12) 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). 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 once these jury determinations have been made unanimously and beyond a reasonable doubt thus does not violate the Constitution.

In arguing to the contrary, Vargas relies on *Hurst v. Florida*, 136 S. Ct. 616, 619-622 (2016). Pet. 12-13. 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* 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 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, a defendant is eligible for a death sentence only after the jury finds true at least one of the special circumstances in California Penal Code section 190.2(a). 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, 136 S. Ct. 633 (2016), effectively forecloses Vargas’s 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 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, 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 Vargas’s argument that the jury’s final weighing of aggravating versus mitigating factors should proceed under the beyond-a-reasonable-doubt standard. Pet. 14-18. 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 Vargas’s argument that such an instruction is required under the Constitution.

CONCLUSION

The petition for a writ of certiorari should be denied.

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