CAPITAL CASE
No. 20-7592

IN THE

Supreme Court of the United States

ALAN EUGENE MILLER,

Petitioner,

v.

COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITIONER'S REPLY BRIEF

DANIEL J. NEPPL
KELLY HUGGINS
MEGAN COGGESHALL
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, IL 60603
(312) 853-7000

JEFFREY T. GREEN
TOBIAS S. LOSS-EATON*
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
tlosseaton@sidley.com

SUMMER A. WALL
Sidley Austin LLP
555 W. Fifth Street
Los Angeles, CA 90013
(213) 896-6600

Counsel for Petitioner

* Counsel of Record

June 16, 2021

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES Page

STATUTES AND REGULATIONS

TABLE OF AUTHORITIES—continued

REPLY BRIEF

The state disputes none of the grounds for Mr. Miller's *Caldwell* argument. It concedes that the trial judge repeatedly told the jury "that its sentencing recommendation was advisory" only. Opp. i. It agrees that the courts below nevertheless upheld Mr. Miller's death sentence on the opposite theory: that his sentence in fact depends on the jury's split verdict, which supposedly implies a binding, unanimous finding of death eligibility. *Id.* at 13. And the state does not deny that the jurors were thus led to believe that responsibility for Mr. Miller's death sentence rested elsewhere, when—according to the courts below and the state itself—responsibility actually rested with the jury. Nor does the state dispute that the Eleventh Circuit rejected Mr. Miller's *Caldwell* claim solely because it believed *Caldwell* v. *Mississippi* addresses only misstatements of state law—a view two other circuits reject. 472 U.S. 320 (1985). Yet the state does not even try to defend the Eleventh Circuit's rule. See Pet. 17–20; Opp. 7–10.

Instead, the state tries to evade review by asserting that Mr. Miller's *Caldwell* claim has evolved between the Eleventh Circuit and this Court. That is false. As the Eleventh Circuit explained, Mr. Miller argued there that the jury instructions—though accurate under state law—misstated the jury's role under the Sixth Amendment, as explained in *Ring* v. *Arizona*, 536 U.S. 584 (2002). Pet. App. 12a. That is the same argument he makes here. Pet. 16–18. So while the state emphasizes that the jury instruction accurately described the jury's state-law role, that misses the point; the instructions did not accurately describe the jury's *constitutional* role. The state thus offers no reason to reject the first question presented, which

squarely implicates a circuit split on an important and recurring legal question that dictates whether Mr. Miller lives or dies.

On the second question presented, Alabama again tries to avoid review by misleading the Court. It argues that an Alabama judge "cannot sentence a defendant to death" unless the jury first unanimously finds an aggravating circumstance. Opp. 12. But while that's true now, it was not true when Mr. Miller was sentenced. Indeed, Alabama never acknowledges that the state overhauled its capital-sentencing regime in 2017 to address these precise constitutional issues. And Mr. Miller was sentenced to death in 2000, under a scheme that mirrored those this Court held unconstitutional in *Ring* and *Hurst* v. *Florida*, 577 U.S. 92 (2016): The judge, not the jury, found the aggravating circumstance that subjected him to the death penalty. Alabama's refusal to defend this scheme is telling. The Court should also grant review of the second question.

I. Mr. Miller's *Caldwell* claim warrants review.

1. Alabama opens with the false claim that Mr. Miller did not raise his current *Caldwell* theory below. Opp. 8. It contends that Mr. Miller argued to the Eleventh Circuit "that the jury was not properly instructed of its advisory rule" under state law, while he now argues that "the jury was not properly instructed of the ramifications . . . of its findings." *Id.* But Mr. Miller's claim has not changed; the state is mischaracterizing his argument below. Mr. Miller's principal appellate brief argued:

> [T]he sentencing court repeatedly instructed the jury that its sentencing recommendation was advisory only, even though under *Ring* and *Hurst*

> the jury's determination of whether an aggravating circumstance existed must be determinative. . . . [N]owhere in its instructions was the jury told that its determination with respect to the aggravating circumstance would be final and binding on the court and that Miller could not be put to death unless the jurors unanimously found an aggravating circumstance. Instead, the jurors were told that the finding of an aggravating circumstance was simply a step in the jury's ultimate "recommendation" on the issue of life or death.

Br. for Pet'r-Appellant at 26–27, *Miller* v. *Comm'r, Ala. Dep't of Corr.*, 826 F. App'x 743 (11th Cir. 2020) (No. 18-11630). This, of course, is precisely Mr. Miller's claim here. See Pet. 16–18. But if any doubt remains, the Eleventh Circuit correctly explained that Mr. Miller "does not claim" that the instructions misstated "the jury's advisory role in Alabama's capital sentencing scheme": "His argument, instead, is that the jury instructions violated *Caldwell* because—as a matter of federal constitutional law under *Ring* and its progeny, including *Hurst*—the jury's finding of an aggravating circumstance had to be binding on the trial court." Pet. App. 12a. Precisely. Alabama's contrary claim is wrong.

2. Alabama next tries to diminish the split between the Eleventh Circuit and the Third and Eighth Circuits. Opp. 9–10. It fails. To start, Alabama nowhere acknowledges that these courts have adopted contrary readings of *Caldwell* and applied them with dispositive effect. The Eleventh Circuit rejected Mr. Miller's *Caldwell* claim because circuit precedent dictates that *Caldwell* is limited to inaccurate descriptions of the jury's role under state law. Pet. App. 13a; Pet. 12. The Third and Eighth Circuits, by contrast,

have both granted relief under *Caldwell* because "a technically accurate statement" of state law can still mislead the jury about its role in capital sentencing. *Riley* v. *Taylor*, 277 F.3d 261, 298 (3d Cir. 2001); *Driscoll* v. *Delo*, 71 F.3d 701, 713 (8th Cir. 1995); Pet. 14–15. Alabama cannot avoid this square disagreement.

Alabama attempts to distinguish these cases factually. It notes that *Driscoll* and *Riley* involved misleading statements by prosecutors, not judges. Opp. 9–10. But that just underscores the seriousness of the *Caldwell* violation here—the jury was misled about the significance of its advisory verdict not by one of the parties, but by the judge, in the jury instructions. If a prosecutor cannot lead a sentencing jury "to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere," a judge certainly cannot do so. See *Caldwell*, 472 U.S. at 329.

Alabama also cannot deny that the effect of the misleading statements in these cases was the same. *Driscoll* in particular is a close analogue. As here, the *Driscoll* jury was told that its "sentence of death would be a mere recommendation to the judge." 71 F.3d at 711–12 & n.8. As here, these statements were "technical[ly] accura[te] under [state] law." *Id.* at 713. But, as here, the jury was *not* told that the court "could not have sentenced [the defendant] to death absent the jury's recommendation to do so." *Id.* That rule was statutory in *Driscoll*, while it is constitutional here, but the upshot is the same: The jurors were told their verdict was just a recommendation, when it was actually a necessary condition for a death sentence. The Eleventh Circuit held that this scenario does not violate the Constitution, while the Eighth Circuit held that it does. *Id.*; see also *Riley*,

277 F.3d at 298 (agreeing that "a *Caldwell* violation may be established where a technically accurate statement describing the state [death penalty] review process nonetheless 'misled the jury to minimize its role in the sentencing process'"). Simply put, this case would have come out differently in other circuits.

3. On the merits of the *Caldwell* claim, Alabama says little. It does not dispute that, if Mr. Miller's sentence rests on the jury's advisory verdict—as the Eleventh Circuit held and Alabama agrees, Opp. 13—then the jury was misled about the verdict's legal effect. Alabama nowhere contends that the jury was told its "recommendation" would determine whether Mr. Miller "could be sentenced to death or not." See *id.* at 7. Though the state emphasizes the judge's instruction that the existence of an aggravator "is for you, the jury, alone to decide," *id.* at 8, this instruction was limited to the jury's "determin[ation of] what punishment is to be *recommended*." Pet. App. 310a (emphasis added). For the same reason, the instruction that the jury must unanimously find an aggravator "before you can even consider *recommending* the defendant's punishment be death," *id.* (emphasis added), is beside the point. Alabama cannot point to any instruction suggesting that the jury's recommendation would limit the judge's sentencing options, because none exists.

Instead, the judge repeatedly made clear that, *whatever* the jury concluded, its verdict would merely be advisory: "[Y]our *recommendation* will take the form . . . that you *recommend* that the Court sentence the defendant to death . . . [or] you *recommend* to the Court that the Court sentence [Mr. Miller] to life without parole . . . ." Pet. App. 307a (emphasis added). And with good reason: Under Alabama law at the time, the jury's advisory verdict was "not binding"

on the judge. Ala. Code § 13A-5-47(e) (2000); see *infra* § II. The instructions were thus accurate under state law, as all agree; but they were *not* accurate as a matter of Sixth Amendment law—and they did not correctly describe the regime under which the courts below upheld Mr. Miller's death sentence. That the "instructions accurately reflect[ed] the advisory nature of the jurors' role" under state law is not a reason to avoid "grappl[ing] with the Eighth Amendment implications" of a Sixth Amendment holding that "then-advisory jury findings are now binding." *Guardado* v. *Jones*, 138 S. Ct. 1131, 1133 (2018) (Sotomayor, J., dissenting from denial of certiorari) (cleaned up).

Finally, Alabama does not defend the Eleventh Circuit's narrow construction of *Caldwell*, which two other circuits reject. See Pet. 17–18. Nor does it try to explain why the Eighth Amendment would prohibit misleading a jury about its role under state law, but not about its role under the Constitution. *Id.* at 18. The state thus offers no meaningful response to the petition's showing that the Eleventh Circuit's rule is incorrect. The Court should grant review of the first question presented.

II. Mr. Miller's *Ring* claim warrants review.

Alabama agrees that "the Sixth Amendment requires that a jury must find any aggravating circumstance that is necessary to imposition of the death penalty." Opp. 11. And it does not dispute that this principle is violated if a state allows a judge to "override" a jury's advisory verdict and "independently find[ ] the existence of aggravating circumstances." *Id.* at 11, 15. But no violation occurred here, the state claims, because "Alabama law requires the jury (rather than the judge) to find the existence of the aggravating circumstance that makes the defendant

death eligible." Opp. 15. The state, however, is describing Alabama's *current* sentencing regime—not the one that governed Mr. Miller's trial and sentence, which has precisely the features this Court condemned in *Ring*.

The crux of Alabama's position is that a trial judge "cannot sentence a defendant to death unless at least one aggravating circumstance was proven, a determination that must first be made by the jury." Opp. 12. For this proposition, it cites Ala. Code § 13A-5-47. Sure enough, that provision now says: "Where the jury has returned a verdict of death, the court shall sentence the defendant to death. Where a sentence of death is not returned by the jury, the court shall sentence the defendant to life imprisonment without parole." Ala. Code § 13A-5-47(a). But this language dates only to 2017, when Alabama overhauled its capital-sentencing regime to address the constitutional defects at issue here. See 2017 Ala. Laws 131 (attached here as an addendum, showing all the changed statutory language); Equal Justice Initiative, *Alabama Abolishes Judge Override in Death Penalty Cases* (Apr. 4, 2017), https://eji.org/news/alabama-legislature-passes-law-abolishing-judicial-override/.

When Mr. Miller was sentenced in 2000, Alabama law was very different. It provided that trial judges would make their own independent findings "concerning the existence or nonexistence of each aggravating circumstance." Ala. Code § 13A-5-47(d) (2000); *id.* § 13A-5-47(e) (trial court must weigh "the aggravating circumstances it finds to exist"). And the statute made clear that, although the jury's "advisory verdict . . . shall be given consideration, *it is not binding upon the court*." *Id.* (emphasis added). So while the jury did determine whether "one or more aggravating

circumstances . . . exist," *id.* § 13A-5-46(e)(1)–(3), that determination was—as the instructions here reflect—merely part of the jury's "advisory" recommendation, *id.*, which the trial judge could disregard. Alabama's scheme "only require[d] the judge to 'consider' the advisory verdict," and gave "ultimate sentencing authority to the trial judge." *Harris* v. *Alabama*, 513 U.S. 504, 508–09 (1995). The state is simply citing newly minted statutes as if they were in effect two decades ago.

To be sure, the state also cites pre-2017 cases to support its description of the sentencing regime. Opp. 11–13 (citing *Ex Parte Waldrop*, 859 So. 2d 1181 (Ala. 2002); *Ex Parte Bohannon*, 222 So. 3d 525 (Ala. 2016); *Lee* v. *Comm'r, Ala. Dep't of Corr.*, 726 F.3d 1172 (11th Cir. 2013)). But these were all "overlap" cases—where an aggravating circumstance was also an element of the offense, so the jury necessarily found an aggravator when it returned a guilty verdict. See Ala. Code § 13A-5-45(e) (2000) (sentencing may rely on "any aggravating circumstance which the verdict convicting the defendant establishes was proven beyond a reasonable doubt at trial"). "In those cases . . . *Apprendi*, *Ring*, and *Hurst* are satisfied because the jury's guilt-phase verdict necessarily includes the finding of an aggravating circumstance necessary for imposition of the death penalty." *Ex Parte State*, 223 So. 3d 954, 967 (Ala. Crim. App. 2016); *e.g.*, *Bohannon*, 222 So. 3d at 533 ("The jury, by its verdict finding Bohannon guilty . . . also found the existence of the aggravating circumstance"); *Ex Parte Waldrop*, 859 So. 2d 1181, 1187–88 (Ala. 2002) (same); *Lee*, 726 F.3d at 1197–98 (same).

But Mr. Miller's case is not an overlap case, see Opp. 2, so these authorities are irrelevant. See *Ex Parte McGriff*, 908 So. 2d 1024, 1037 (Ala. 2004) (dis-

tinguishing overlap and non-overlap cases under *Ring*). And while these cases adopted prophylactic rules or saving constructions in response to *Ring*, they did not help Mr. Miller, whose trial and sentencing came earlier. Indeed, the Alabama Supreme Court held in 2004 that, despite the statute's "advisory verdict" language, the jury's aggravating-circumstance finding must be "binding on the trial court"—and "[a]t no time . . . should the jury be told that its decision on the issue of whether the proffered aggravating circumstance exists is 'advisory' or 'recommending.'" *Id.* at 1038. *McGriff* also directed that "the count of the jurors' votes on the issue of the existence of an aggravating circumstance be expressly recorded on the verdict form." *Id.* at 1039. But Mr. Miller lacked the benefit of these post-*Ring* curatives; the jury was instructed in precisely the manner *McGriff* condemned, there was no special verdict form, and the jurors were not polled about any factual findings. Pet. App. 312a–316a. That's because, in 2000, there was "no requirement . . . that the jury make specific findings as to the existence of aggravating circumstances." *Bush* v. *State*, 431 So. 2d 555, 559 (Ala. Crim. App. 1982), *aff'd*, 431 So. 2d 563 (Ala. 1983). The only finder of fact was the trial court. See Pet. App. 317a ("The Court does find that there was an aggravating circumstance in this case.").

Thus, the Alabama courts have all but conceded what the state refuses to admit here: Alabama's pre-*Ring* "advisory verdict" regime was unconstitutional because it allowed the judge, not the jury, to find aggravating circumstances. None of the protections the state adopted after *Ring*—either by statute or court decision—applied in Mr. Miller's case. The state's defense of the current regime is thus irrelevant. And

the state's refusal to defend the pre-*Ring* regime is telling.

Against this backdrop, *Hurst* is merely icing on the cake. The state reiterates that *Hurst* is not retroactive. But again, that does not matter: *Hurst* merely illustrates that the inference on which the state depends—that the jury must have unanimously found an aggravator, despite issuing a split advisory verdict—is not reasonable. The state "cannot . . . treat" this kind of "advisory recommendation by the jury as the necessary factual finding that *Ring* requires." *Hurst*, 577 U.S. at 100; cf. *Harris*, 513 U.S. at 508 (noting that "Alabama's death penalty statute [was] based on Florida's sentencing scheme"). This is not a new rule that requires retroactive application, but a straightforward application of *Ring*. And again, the Alabama courts recognized even before *Hurst* that *Ring* alone casts doubt on the scheme that governed Mr. Miller's sentencing. So even if this Court ignores *Hurst*, the result is the same: Mr. Miller's sentence is invalid because it rests on the trial judge's findings, not the jury's.

Nor can the state avoid the *Ring* problem based on the presumption that jurors follow instructions. *Contra* Opp. 14. As the Alabama Supreme Court recognized in *McGriff*, instructions like those given here—that the verdict is just "advisory" or a "recommendation—are improper under *Ring*. Thus, the problem here is not the jurors' heeding instructions; it is the substance of the instructions themselves, which gave no hint that the "advisory" verdict reflected a binding factual finding.

In short, Alabama makes no real effort to defend the pre-*Ring* regime under which Mr. Miller was sentenced to die. As the state's own courts have since recognized, that regime does not pass constitutional

muster, precisely because—as here—jurors were instructed that their verdict was just an "advisory" recommendation, and were told nothing about making unanimous, binding factual findings. Because the state does not meaningfully dispute this regime's invalidity or the fact that it governed here, the Court should grant review on Mr. Miller's *Ring* claim as well.

CONCLUSION

The petition should be granted.

Respectfully submitted,

DANIEL J. NEPPL
KELLY HUGGINS
MEGAN COGGESHALL
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, IL 60603
(312) 853-7000

JEFFREY T. GREEN
TOBIAS S. LOSS-EATON*
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000
tlosseaton@sidley.com

SUMMER A. WALL
Sidley Austin LLP
555 W. Fifth Street
Los Angeles, CA 90013
(213) 896-6600

Counsel for Petitioner

* Counsel of Record

June 16, 2021

ADDENDUM

ACT #2017-131

SB16

178947-3

By Senator Brewbaker

RFD: Judiciary

First Read: 07-FEB-17

PFD: 12/19/2016

SB16

ENROLLED, An Act,

To amend Sections 13A-5-45, 13A-5-46, and 13A-5-47, Code of Alabama 1975, relating to capital cases and to the determination of the sentence by courts; to prohibit a court from overriding a jury verdict.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 13A-5-45, 13A-5-46, 13A-5-47, Code of Alabama 1975, are amended to read as follows:

"§13A-5-45.

"(a) Upon conviction of a defendant for a capital offense, the trial court shall conduct a separate sentence hearing to determine whether the defendant shall be sentenced to life imprisonment without parole or to death. The sentence hearing shall be conducted as soon as practicable after the defendant is convicted. Provided, however, if the sentence hearing is to be conducted before the trial judge without a jury or before the trial judge and a jury other than the trial jury, as provided elsewhere in this article, the trial court with the consent of both parties may delay the sentence hearing until it has received the pre-sentence investigation report specified in Section 13A-5-47(b). Otherwise, the

sentence hearing shall not be delayed pending receipt of the pre-sentence investigation report.

"(b) The state and the defendant shall be allowed to make opening statements and closing arguments at the sentence hearing. The order of those statements and arguments and the order of presentation of the evidence shall be the same as at trial.

"(c) At the sentence hearing evidence may be presented as to any matter that the court deems relevant to sentence and shall include any matters relating to the aggravating and mitigating circumstances referred to in Sections 13A-5-49, 13A-5-51, and 13A-5-52. Evidence presented at the trial of the case may be considered insofar as it is relevant to the aggravating and mitigating circumstances without the necessity of re-introducing that evidence at the sentence hearing, unless the sentence hearing is conducted before ~~a jury other than the one before which the defendant was tried~~ a trial judge other than the one before whom the defendant was tried or a jury other than the trial jury before which the defendant was tried.

"(d) Any evidence which has probative value and is relevant to sentence shall be received at the sentence hearing regardless of its admissibility under the exclusionary rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. This subsection

shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the State of Alabama.

"(e) At the sentence hearing the state shall have the burden of proving beyond a reasonable doubt the existence of any aggravating circumstances. Provided, however, any aggravating circumstance which the verdict convicting the defendant establishes was proven beyond a reasonable doubt at trial shall be considered as proven beyond a reasonable doubt for purposes of the sentence hearing.

"(f) Unless at least one aggravating circumstance as defined in Section 13A-5-49 exists, the sentence shall be life imprisonment without parole.

"(g) The defendant shall be allowed to offer any mitigating circumstance defined in Sections 13A-5-51 and 13A-5-52. When the factual existence of an offered mitigating circumstance is in dispute, the defendant shall have the burden of interjecting the issue, but once it is interjected the state shall have the burden of disproving the factual existence of that circumstance by a preponderance of the evidence.

"§13A-5-46.

"(a) Unless both parties with the consent of the court waive the right to have the sentence hearing conducted before a jury as provided in Section 13A-5-44(c), it shall be

conducted before a jury which shall return ~~an advisory~~ a verdict as provided by subsection (e) of this section. If both parties with the consent of the court waive the right to have the hearing conducted before a jury, the trial judge shall proceed to determine sentence without ~~an advisory~~ a verdict from a jury. Otherwise, the hearing shall be conducted before a jury as provided in the remaining subsections of this section.

"(b) If the defendant was tried and convicted by a jury, the sentence hearing shall be conducted before that same jury unless it is impossible or impracticable to do so. If it is impossible or impracticable for the trial jury to sit at the sentence hearing, or if the case on appeal is remanded for a new sentence hearing before a jury, a new jury shall be impanelled to sit at the sentence hearing. The selection of that jury shall be according to the laws and rules governing the selection of a jury for the trial of a capital case.

"(c) The separation of the jury during the pendency of the sentence hearing, and if the sentence hearing is before the same jury which convicted the defendant, the separation of the jury during the time between the guilty verdict and the beginning of the sentence hearing, shall be governed by the law and court rules applicable to the separation of the jury during the trial of a capital case.

"(d) After hearing the evidence and the arguments of both parties at the sentence hearing, the jury shall be instructed on its function and on the relevant law by the trial judge. The jury shall then retire to deliberate concerning the ~~advisory~~ verdict it is to return.

"(e) After deliberation, the jury shall return ~~an advisory~~ a verdict as follows:

"(1) If the jury determines that no aggravating circumstances as defined in Section 13A-5-49 exist, it shall return ~~an advisory verdict recommending to the trial court that the penalty be~~ a verdict of life imprisonment without parole;

"(2) If the jury determines that one or more aggravating circumstances as defined in Section 13A-5-49 exist but do not outweigh the mitigating circumstances, it shall return ~~an advisory verdict recommending to the trial court that the penalty be~~ a verdict of life imprisonment without parole;

"(3) If the jury determines that one or more aggravating circumstances as defined in Section 13A-5-49 exist and that they outweigh the mitigating circumstances, if any, it shall return ~~an advisory verdict recommending to the trial court that the penalty be~~ a verdict of death.

"(f) The decision of the jury to return ~~an advisory~~ a verdict recommending a sentence of life imprisonment without

parole must be based on a vote of a majority of the jurors. The decision of the jury to recommend a sentence of death must be based on a vote of at least 10 jurors. The verdict of the jury must be in writing and must specify the vote.

"(g) If the jury is unable to reach ~~an advisory~~ a verdict recommending a sentence, or for other manifest necessity, the trial court may declare a mistrial of the sentence hearing. Such a mistrial shall not affect the conviction. After such a mistrial or mistrials another sentence hearing shall be conducted before another jury, selected according to the laws and rules governing the selection of a jury for the trial of a capital case. Provided, however, that, subject to the provisions of Section 13A-5-44(c), after one or more mistrials both parties with the consent of the court may waive the right to have ~~an advisory~~ a verdict from a jury, in which event the issue of sentence shall be submitted to the trial court without a recommendation from a jury.

"§13A-5-47.

"(a) After the sentence hearing has been conducted, and after the jury has returned ~~an advisory~~ a verdict, or after such a verdict has been waived as provided in Section 13A-5-46(a) or Section 13A-5-46(g), the trial court shall ~~proceed to determine the~~ impose sentence. Where the jury has returned a verdict of death, the court shall sentence the

defendant to death. Where a sentence of death is not returned by the jury, the court shall sentence the defendant to life imprisonment without parole. This code section shall not affect a trial court's power to sentence in accordance with a guilty plea.

"~~(b) Before making the sentence determination, the trial court shall order and receive a written pre-sentence investigation report. The report shall contain the information prescribed by law or court rule for felony cases generally and any additional information specified by the trial court. No part of the report shall be kept confidential, and the parties shall have the right to respond to it and to present evidence to the court about any part of the report which is the subject of factual dispute. The report and any evidence submitted in connection with it shall be made part of the record in the case.~~

"~~(c) Before~~ (b) Where the sentencing jury is waived pursuant to Section 13A-5-44 and before imposing sentence the trial court shall permit the parties to present arguments concerning the existence of aggravating and mitigating circumstances and the proper sentence to be imposed in the case. The order of the arguments shall be the same as at the trial of a case. The trial court, based upon evidence presented at trial and the evidence presented during the sentence hearing and any evidence submitted in connection with

it, shall enter specific written findings concerning the existence or nonexistence of each aggravating circumstance enumerated in Section 13A-5-49, each mitigating circumstance enumerated in Section 13A-5-51, and any additional mitigating circumstances offered pursuant to Section 13A-5-52. The trial court shall also enter written findings of facts summarizing the crime and the defendant's participation in it. In deciding upon the sentence, the trial court shall determine whether the aggravating circumstances it finds to exist outweigh the mitigating circumstances it finds to exist.

~~"(d) Based upon the evidence presented at trial, the evidence presented during the sentence hearing, and the pre-sentence investigation report and any evidence submitted in connection with it, the trial court shall enter specific written findings concerning the existence or nonexistence of each aggravating circumstance enumerated in Section 13A-5-49, each mitigating circumstance enumerated in Section 13A-5-51, and any additional mitigating circumstances offered pursuant to Section 13A-5-52. The trial court shall also enter written findings of facts summarizing the crime and the defendant's participation in it.~~

~~"(e) In deciding upon the sentence, the trial court shall determine whether the aggravating circumstances it finds to exist outweigh the mitigating circumstances it finds to exist, and in doing so the trial court shall consider the~~

~~recommendation of the jury contained in its advisory verdict, unless such a verdict has been waived pursuant to Section 13A-5-46(a) or 13A-5-46(g). While the jury's recommendation concerning sentence shall be given consideration, it is not binding upon the court.~~"

Section 2. This act shall apply to any defendant who is charged with capital murder after the effective date of this act and shall not apply retroactively to any defendant who has previously been convicted of capital murder and sentenced to death prior to the effective date of this act.

Section 3. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.

Kay Ivey

President and Presiding Officer of the Senate

Mac McCutcheon

Speaker of the House of Representatives

SB16
Senate 23-FEB-17
I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Passed: 04-APR-17

By: Senator Brewbaker

APPROVED 4-11-2017

TIME 12:14 PM

Kay Ivey
GOVERNOR

Alabama Secretary Of State

Act Num....: 2017-131
Bill Num...: S-16

Recv'd 04/11/17 02:00pmSLF

SPONSOR

L Brinkley

CO-SPONSORS

2 19

3 20

4 21

5 22

6 23

7 24

8 25

9 26

10 27

11 28

12 29

13 30

14 31

15 32

16 33

17 34

18 35

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, SB 16

yeas 27, nays 0 abstain 0

PATRICK HARRIS,
Secretary

I hereby certify that the notice & proof is attached to the Bill, SB _____ as required in the General Acts of Alabama, 1975 Act No. 919.

PATRICK HARRIS,
Secretary

CONFERENCE COMMITTEE

Senate Conferees _____

SENATE ACTION

DATE: 3-8-07 20

RD 1 RFD Judy

REPORT OF STANDING COMMITTEE

This bill having been referred by the House to its standing committee on Judy was acted upon by such committee in session, and returned therefrom to the House with the recommendation that it be ~~Passed~~, w/amend(s) w/sub_____.

This 9 day of March, 2007.

Michael Jay Chairperson

DATE: 3-9 20

RF RD 2

DATE: 20

RE-REFERRED RE-COMMITTED

Committee _____

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, SB 16

YEAS 30 NAYS 14

GREG PAPPAS,
Clerk

FURTHER HOUSE ACTION (OVER)