

No. 22-6514

IN THE SUPREME COURT OF THE UNITED STATES

SANTIAGO PINEDA, *Petitioner*

v.

STATE OF CALIFORNIA, *Respondent*.

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

**REPLY TO BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI**

(DEATH PENALTY CASE)

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**REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF
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(DEATH PENALTY CASE)**

This case presents the question whether the mandatory weighing of aggravating and mitigating circumstances under the California death penalty statute – a factfinding determination that must be made before the death penalty is a punishment option – violates the Fifth, Sixth, and Fourteenth Amendments where there is no requirement that this determination must be found by a jury beyond a reasonable doubt. Respondent, the State of California, opposes certiorari, asserting that under California law the jury’s weighing of aggravating and mitigating circumstances does not increase the defendant’s authorized punishment. Respondent’s Brief in Opposition (hereafter BIO) 7-8.¹

¹ Respondent does not contest the fact that the weighing of aggravating and mitigating circumstances is a factfinding.

Respondent argues that 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. BIO 7. As respondent outlines, after a finding of guilt of first degree murder, the default sentence is a prison term of 25 years to life. BIO 5. 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. BIO 5. A “true” finding must be unanimous and beyond a reasonable doubt. BIO 5. Then, the case proceeds to a second stage where the penalty of death or life imprisonment without parole may be imposed. BIO 6-7.

Respondent argues that because death is the maximum punishment prescribed by the statute in this second stage (the penalty stage), imposing death “once these jury determinations have been made unanimously and beyond a reasonable doubt does not violate the Constitution.” BIO 8. Respondent maintains that this determination involves a choice between a greater or lesser authorized penalty and not an increase in the maximum potential penalty. BIO 9.

Contrary to respondent’s argument, without findings at the second stage, there would be no sentence of death. If a defendant cannot be sentenced to death without an additional finding, in this case that

aggravating factors outweigh mitigating factors, that finding increases the penalty for the crime of capital murder beyond the statutory maximum.

Thus, such a finding by the jury in the penalty phase increases the maximum potential penalty. As this Court stated in *Blakely v.*

Washington, 542 U.S. 296 (2004): “[T]he relevant [maximum level of punishment] . . . is not the maximum [level of punishment] . . . a [sentencer] . . . may impose after finding additional facts, but the maximum [they] . . . may impose without any additional findings.” *Id.* at 303-04 (citing *Ring v. Arizona*, 536 U.S. 584 (2002); *Apprendi v. New Jersey*, 530 U.S. 466, 488 (2000)). In California, the maximum the jury may impose without any additional findings in the second stage is life in prison without the possibility of parole. Cal. Penal Code § 190.3.² Consequently, a finding that aggravating factors outweigh mitigating factors at the penalty phase increases the maximum potential penalty.

Apprendi, *Ring*, and *Hurst v. Florida*, 577 U.S. 92 (2016), show that the finding that the aggravating circumstances outweigh the mitigating circumstances does not operate as merely a means of aiding the jury in selection of punishment from an already authorized range, as respondent argues. In California, when the jury finds a special circumstance true, it finds a capital defendant death eligible and thereby increases the

² All statutory references are to the California Penal Code unless otherwise specified.

maximum *possible* level of punishment a capital defendant may receive; it does not, however, necessarily increase the maximum level of punishment he or she actually will receive. After a finding on the special circumstances, the level of punishment that a defendant actually receives has yet to be increased from life to death. In fact, as noted, death is not even a possible punishment option at this stage without the additional finding that the aggravating circumstances outweigh the mitigating circumstances. § 190.3.

Because the punishment is higher with this finding than without, the mandatory finding that the aggravating factors outweigh the mitigating factors is essential to the level of punishment that a defendant actually receives. As explained in Justice Scalia’s concurrence in *Ring*, Sixth Amendment procedures apply to all findings “essential to [the] imposition of the level of punishment that . . . [a] defendant [actually] receives[.]” 536 U.S. at 610 (Scalia, J., concurring). Because California law does not require that the finding that the aggravators outweigh the mitigators must be made beyond a reasonable doubt, the statute fails to comport with the Sixth Amendment, as interpreted by *Apprendi*, *Ring*, and *Hurst*.

Respondent counters petitioner’s reliance on *Hurst* by asserting that under the Florida system considered in *Hurst*, after a jury verdict of first degree murder, a convicted defendant was not “eligible for death”

unless the judge further determined that an enumerated aggravating circumstance existed. BIO 8. Respondent further asserts that in California, by comparison, a defendant is “eligible for a death sentence” only after the jury finds true at least one of the enumerated special circumstances. BIO 8. In *Hurst*, however, the Court uses the terminology “eligible for death” in the Florida system in the sense that there are findings which actually authorize the imposition of the death penalty at the sentencing hearing, and not in the sense that an accused is only potentially facing a death sentence, which is what the special circumstance finding establishes under the California statute. Like the judge’s determination in the prior Florida system, under California law it is the jury’s determination that the aggravating factors outweigh the mitigating factors that finally authorizes imposition of the death penalty.³

Finally, respondent argues that *Kansas v. Carr*, 577 U.S. 108 (2016) forecloses petitioner’s argument. BIO 9. *Carr*, however, only dealt with the question of whether this Court’s case law required capital sentencing courts “to affirmatively inform the jury that mitigating circumstances need not be proved beyond a reasonable doubt” – and not

³ In 2020, in *State v. Poole*, 297 So. 3d 487 (Fla. 2020), the Florida Supreme Court determined that it had erred in its 2016 opinion in *Hurst v. State*, 202 So. 3d 40 (Fla. 2016), and “reced[ed]” from its earlier opinion “except to the extent it requires a jury unanimously to find the existence of a statutory aggravating circumstance beyond a reasonable doubt.” *Id.* at 507-08. The Florida court’s shift in position does not undermine the authority of this Court’s opinion in *Hurst*.

whether the finding that the aggravators outweigh the mitigators must be found beyond a reasonable doubt under the Sixth Amendment. *See Carr*, 577 U.S. at 118-19. Indeed, as the *Carr* opinion notes, the instruction in the case “makes clear that both the existence of aggravating circumstances and the conclusion that they outweigh mitigating circumstances must be proved beyond a reasonable doubt.” *Carr*, 577 U.S. at 121. Further, *Carr*’s discussion of “whether it is even possible to apply a standard of proof to the mitigating-factor determination” relied primarily on dicta. *See id.* at 119. (“[a]pproaching the question in the abstract, and without reference to our capital-sentencing case law . . .”.)

The mandatory weighing of aggravating and mitigating circumstances under the California death penalty statute is a factfinding that serves to increase the maximum punishment for the crime. Since California’s death penalty statute does not require that this determination be found by a jury beyond a reasonable doubt, it violates the Fifth, Sixth and Fourteenth Amendments.

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CONCLUSION

Wherefore, petitioner respectfully requests that this Court grant the petition for a writ of certiorari and reverse the judgment of the Supreme Court of California upholding his death sentence.

Dated: February 10, 2023

Respectfully submitted,

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