

No. 24-5782

IN THE
SUPREME COURT OF THE UNITED STATES

Harvey Miguel Robinson,
Petitioner

V.

Secretary, Pennsylvania Department of Corrections;
Superintendent, Phoenix SCI; Superintendent, Rockview SCI;
Lehigh County District Attorney,
Respondents

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

BRIEF FOR RESPONDENT
IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE: QUESTIONS PRESENTED

- (1) Whether the Third Circuit Court of Appeals properly determined that the trial court's instruction to the jury did not run afoul of *Simmons v. South Carolina*, 512 U.S. 154 (1994) and its progeny?
- (2) Whether the federal habeas court properly reviewed the Pennsylvania Supreme Court's review of petitioner's issue on the merits and deferred to the state court's reasonable resolution?

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ORDERS AND OPINIONS BELOW

The opinion of the Third Circuit Court of Appeals is reported at 97 F.4th 985 (3d Cir. 2024). The Pennsylvania Supreme Court opinion is reported at 864 A.2d 460 (Pa. 2004).

JURISDICTION

The Court of Appeals issued its opinion on April 4, 2024. The Court of Appeals denied a petition for rehearing and rehearing *en banc* on July 16, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

[N]or shall any state deprive any person of life, liberty, or property, without due process of law.

Title 28 U.S.C. § 2254 states, in pertinent part:

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

COUNTER-STATEMENT OF THE CASE

The facts in this case are set out in detail by the Pennsylvania Supreme Court on direct appeal in *Commonwealth v. Robinson*, 864 A.2d 460 (Pa. 2004). Following is a brief summary of the facts adduced at trial in the above-captioned matter:

Petitioner here has been convicted of three (3) serial murders in the deaths of Charlotte Schmoyer, Joan Burghardt and Jessica Jean Fortney. The within case involves the murder of Jessica Jean Fortney.

On July 14, 1993 Jessica Jean Fortney, forty-seven years old, was found dead in her home on 407 North Bryan Street in the City of Allentown Pennsylvania. Ms. Fortney had been savagely beaten and sexually assaulted. Autopsy results showed that she died as a result of being strangled and beaten by Petitioner, who had cut the screen to one of her windows to gain access to the home.

Following a penalty hearing, a jury sentenced petitioner to death. He now seeks certiorari following the Third Circuit Court of Appeals decision affirming the denial of his petition for writ of habeas corpus. Review is not warranted and the petition should be denied.

REASONS FOR DENYING THE WRIT

THIS CASE PRESENTS NO IMPORTANT OR WIDE REACHING ISSUE OF LAW; RATHER, THE DECISION OF THE COURT OF APPEALS PROPERLY APPLIED WELL-SETTLED LEGAL PRINCIPLES TO THE SPECIFIC FACTS OF THIS CASE.

The Third Circuit's ruling in this case broke no new legal ground nor deviated from the principles this Court has announced with respect both to federal *habeas* review of state court decisions and the particular substantive law governing the petitioner's claims. To the contrary, the Court of Appeals faithfully applied this Court's teachings in analyzing petitioner's claim. Further review of this case is unwarranted.

1. The Third Circuit Correctly Determined That The Trial Court's Instruction To The Jury Complied With *Simmons* And Its Progeny.

In its plurality decision in *Simmons v. South Carolina*, 512 U.S. 154 (1994), this Court held "that where the defendant's future dangerousness is at issue, and state law prohibits the defendant's release on parole, due process requires that the sentencing jury be informed that the defendant is parole ineligible." 512 U.S. at 156. Subsequently, a majority of the Court characterized the rule of *Simmons* as follows:

[W]here a capital defendant's future dangerousness is at issue, and the only sentencing alternative to death is life imprisonment without the possibility of parole, due process entitles the defendant "to inform the jury of [his] parole ineligibility, either by a jury instruction or in arguments by counsel."

Shafer v. South Carolina, 532 U.S. 36, 39 (2001) (quoting *Ramdass v. Angelone*, 530 U.S. 156, 165 (2000)(plurality opinion). See also *Kelly v. South Carolina*, 534 U.S. 246, 248 (2002).

In this case, during the trial court's jury charge following the penalty phase of petitioner's trial, the following exchange took place between the trial court and one of the jurors:

Juror: On the life in prison, is that without parole, just so that we are sure? Would there be a chance of parole if it was life in prison?

Trial Court: I don't see how I can guarantee – that's the present law. But what if the legislature changes the law? I can't guarantee that. That's the way the law is now.

Juror: Just so we know, Your Honor.

Trial Court: Who knows two years from now if they'll change the law. I can't tell you.

N.T. 11/10/1994 at 2767-68.

Immediately following this exchange, both the prosecutor and defense counsel requested a sidebar with the trial court. After the sidebar had concluded, the trial court again addressed the jury and gave them the following instruction:

"I am to tell you, and it's accurate, 'Life is life.' There won't be any parole. Life is life."

N.T. 11/10/1994 at 2769.

Conveniently, as has been the case in his prior pleadings, petitioner barely acknowledges the final instruction by the trial court. See, e.g., *Commonwealth v. Robinson*, 864 A.2d 460, fn. 68 (Pa. 2004). However, the Third Circuit in its opinion cogently explained why the challenge to the trial court's instruction was correctly resolved by the Pennsylvania Supreme Court and why no further review is merited:

An effective *Simmons* instruction must clarify that the defendant cannot get parole. *Simmons*, 512 U.S. at 177–78, 114 S.Ct. 2187 (O'Connor, J., concurring in the judgment). It is not enough to say that the defendant will “die in prison after spending his natural life there” or that “life imprisonment means until the death of the defendant.” *Kelly*, 534 U.S. at 257, 122 S.Ct. 726 (cleaned up) (quoting *Shafer*, 532 U.S. at 52, 121 S.Ct. 1263). True, the jury may hear “truthful information regarding the availability of commutation, pardon, and the like.” *Simmons*, 512 U.S. at 177, 114 S.Ct. 2187 (O'Connor, J., concurring in the judgment). Yet it must also hear that, apart from those exceptions, the defendant will not be eligible for parole, at least under current law. *Id.* at 178, 114 S.Ct. 2187.

Here, both sides agree that the judge’s first statement was problematic. When asked about parole, he speculated about possible changes to the law, suggesting that the law was unsettled. Even if that speculation did not violate *Simmons*, the wiser course would have been to state current law without speculating.

But we need not decide whether this speculation violated *Simmons* because the judge promptly fixed it. After the prosecution objected, the judge stated, “I must have misspoken somewhere.” App. 210. And after the sidebar, he told the jury, “I’m to tell you, and it’s accurate, ‘Life is life.’ There won’t be any parole. Life is life.” App. 211. That answer cleared up any doubt. These final words rang in the jurors’ ears as they went to deliberate. *See Weeks v. Angelone*, 528 U.S. 225, 234, 120 S.Ct. 727, 145 L.Ed.2d 727 (2000) (“A jury is presumed to follow [the court’s] instructions ... [and] to understand a judge’s answer to its question.” (citation omitted)). So even if the judge’s first statement was wrong, he quickly retracted it, curing any error. Thus, under any standard of review, the Pennsylvania Supreme Court properly rejected Robinson’s claim.

* * * * *

When the prosecution indicates that a capital defendant who is ineligible for parole will be dangerous to society, the defendant has a right to inform the jury of the law. The trial judge did that: He retracted his speculation and gave a clear *Simmons* instruction.

Robinson v. Sec’y, Pennsylvania Dep’t of Corr., 97 F.4th 985, 987–88 (3d Cir. 2024).

The Third Circuit's conclusion and analysis is consistent with *Simmons* and its progeny, as well as this Court's precedent regarding jury instructions. Further review is not warranted.

2. The Third Circuit Correctly Applied The Principles This Court Has Set Forth Regarding Federal Habeas Review.

Petitioner attempts to fabricate a controversy by pretending that the Third Circuit deferred to an unreasonable application of *Simmons* by the state court and then employed its own reasoning to support the state court's decision. According to him, such review is indicative of the "deep circuit split" on whether federal habeas review permits the reviewing court to speculate on theories not addressed by the state court to determine whether the state court's decision was correct. Whether or not there is a split is irrelevant here. The Third Circuit did not engage in any speculation. Rather it plainly deferred to the state court's reasonable resolution of the issue. This ruling does not give rise to any legal issue worthy of further review.

Claims resolved on the merits in state court are reviewed under the deferential standard established by the Antiterrorism and Effective Death Penalty Act of 1996, which precludes habeas relief unless the state court's adjudication of a claim: (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. 28 U.S.C. § 2254(d). The Court applies this standard to the state court's "last reasoned decision" on the

petitioner's claim. *Bond v. Beard*, 539 F.3d 256, 290-91 (3d Cir. 2008). Here, that is the decision of the Pennsylvania Supreme Court.

In *Wilson v. Sellers*, 584 U.S. 122 (2018) this Court elucidated, “[d]eciding whether a state court’s decision involved an unreasonable application of federal law or was based on an unreasonable determination of fact requires the federal habeas court to train its attention on the particular reasons—both legal and factual—why state courts rejected a state prisoner’s federal claims ... and to give appropriate deference to that decision.” 584 U.S. 122, 125-26 (internal citations and quotation marks omitted). The *Sellers* Court described a federal habeas court’s task under § 2254(d) as:

straightforward ... when the last state court to decide a prisoner’s federal claim explains its decision on the merits in a reasoned opinion. In that case, a federal habeas court simply reviews the specific reasons given by the state court and defers to those reasons if they are reasonable. We have affirmed this approach time and again.

Id. at 1192 (citations omitted). That is precisely what the Third Circuit did here.

Following the trial court’s initial equivocal response to a juror’s question regarding the possibility of parole, the court immediately thereafter clarified, “Life is life. There won’t be any parole. Life is life.” N.T., 11/10/1994, p. 2769. In addressing petitioner’s claim that the trial court violated *Simmons*, the Pennsylvania Supreme Court determined that in light of this instruction, there was no error. *Robinson*, 864 A.2d at 515.

As its opinion reflects, the Third Circuit reviewed the state court record and determined that the Pennsylvania Supreme Court’s disposition of this claim

was neither contrary to, nor an unreasonable application of this Court's precedent. Its conclusion was sound.

The Third Circuit conducted its review of this claim pursuant to the provisions of § 2254(d), since the state courts had adjudicated the claim on the merits. Its decision presents no novel or significant development in the law and certainly is of no widespread effect. There is no credible basis therefore for further review of this claim.

CONCLUSION

Wherefore, Respondents respectfully requests this Court to deny the petition for a writ of certiorari.

Respectfully Submitted,



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