

In the Supreme Court of the United States

VICTOR M. MIRANDA-GUERRERO,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

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

BRIEF IN OPPOSITION

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**CAPITAL CASE
QUESTION PRESENTED**

Whether a California jury that has already found unanimously and beyond a reasonable doubt that the defendant committed first degree murder and that special circumstances exist that render him eligible for the death penalty must also, in order to return a penalty verdict of death, find beyond a reasonable doubt that specific aggravating factors exist, and that those aggravating factors outweigh the mitigating circumstances.

DIRECTLY RELATED PROCEEDINGS

California Supreme Court:

People v. Miranda-Guerrero, No. S118147 (judgment entered January 25, 2023) (this case below).

In re Miranda-Guerrero, No. S277404 (pending) (habeas corpus)

California Court of Appeal, Fourth District:

Department of Corrections and Rehabilitation v. Superior Court, No. G058789 (writ denied March 5, 2020).

Orange County Superior Court:

People v. Miranda-Guerrero, No. 00WF1146 (judgment entered August 4, 2003) (this case below).

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STATEMENT

1. The evidence at trial showed that petitioner Victor M. Miranda-Guerrero viciously attacked several women in downtown Huntington Beach, raping and killing one. *See* Pet. App. A 1-7.

On September 12, 1999, when Jamie H. was sleeping in her car in a parking structure, petitioner smashed the car window and began punching her in the face. Pet. App. A 1. He grabbed her by the hair and slammed her head into the car door. *Id.* He then took her to a residential area and tried to rape her, threatening that he had a gun. *Id.* at 2. She managed to escape, and petitioner's DNA was found in blood on her boot. *Id.*

On November 27, 1999, petitioner attacked Bridgette Ballas as she walked home at night. Pet. App. A 2-3. Ballas was heard screaming, "Oh my God" three times. *Id.* at 3. Her unconscious body was found lying in the street with her pants pulled down and her shirt pulled up above her breasts. *Id.* In addition to head injuries (which she died of a few days later), Ballas had abrasions inside her vagina. *Id.* at 3-4. Petitioner's DNA was found in saliva on Ballas's breast. *Id.* at 4. When later interviewed, petitioner gave contradictory stories. He first claimed he had never seen Ballas; then he stated that he was walking with her the night she died but he left before she was hurt. *Id.* at 14-15. Eventually, he said that Ballas had fallen and hit her head on the curb—but also hypothesized that he may have hit her twice. *Id.* at 4-5, 14-15. Petitioner conceded that he had raped Ballas. *Id.* at 5.

On May 25, 2000, petitioner approached Heidi D. and her friends at night in the same parking structure where he had attacked Jamie H. Pet. App. A 6.¹ Petitioner grabbed Heidi's keys and entered the driver's seat of her car. *Id.* The women went for help following a violent struggle, but by the time they returned, petitioner was gone. *Id.*

Later that night, Deena L. was walking home when she realized petitioner was following her. Pet. App. A 6-7. He grabbed her by the hair, covered her mouth, and pushed her down to the sidewalk. Pet. App. A 7. Deena bit him, and petitioner repeatedly slammed her head into a brick planter. *Id.* Deena managed to get up, run away, and find a police officer. *Id.* The officer arrested petitioner in a nearby alleyway. *Id.* Deena identified petitioner as her attacker, and his DNA was found under her fingernails and in her teeth. *Id.*

2. At the guilt-phase of petitioner's trial, the jury convicted him of kidnapping to commit rape, attempted carjacking, assault with intent to commit rape, receiving stolen property, and the murder of Bridget Ballas. Pet. App. A. 1. The jury found true, beyond a reasonable doubt, the special circumstance that Ballas's murder occurred during the commission or attempted commission of rape, qualifying him for the death penalty under California law. *Id.*; see Cal. Penal Code § 190.2.

¹ See 3 RT 588, 594; 6 RT 1028; 7 RT 1211; 11 RT 1886-1887. RT refers to the Reporter's Transcript; CT refers to the Clerk's Transcript.

At the penalty phase, the prosecutor's case focused on the circumstances of Ballas's death, the facts of petitioner's other offenses, and victim impact testimony from Ballas's family. Pet. App. A 8. The defense focused on petitioner's childhood and alleged cognitive limitations. *Id.* at 8-10. The court instructed that in choosing whether petitioner should be punished by death or by life imprisonment without parole, jurors were to "consider, take into account and be guided by the applicable factors of aggravating and mitigating circumstances;" 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 641-642. The jury returned a verdict of death. Pet. App. A 1.

3. The California Supreme Court affirmed. Pet. App. A 1-42. As relevant here, petitioner claimed that California's death penalty scheme is constitutionally deficient because it does not require the jury, at the penalty phase, to apply the beyond-a-reasonable-doubt standard to its finding on the existence and weight of aggravating and mitigating factors when selecting a death sentence for a person whom they found eligible for it at the guilt-phase. Pet. 7-8. The court rejected the argument based on its prior decisions in *People v. McDaniel*, 12 Cal. 5th 97, 142-143 (2021), and *People v. Anderson* 25 Cal. 4th 543, 601 (2001). Pet. App. A at 41-42.

ARGUMENT

Petitioner argues that California's death penalty system violates the Fifth, Sixth, and Fourteenth Amendments because state law does not require the penalty-phase jury to find the existence of aggravating factors beyond a reasonable doubt, or to find beyond a reasonable doubt that those aggravating factors outweigh the mitigating factors. Pet. 3-6, 9-18. 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., *Ramirez v. California*, 143 S. Ct. 1027 (2023) (No. 22-6445); *Pineda v. California*, 143 S. Ct. 1005 (2023) (No. 22-6514); *Mataele v. California*, 143 S. Ct. 751 (2023) (No. 22-6088); *Bracamontes v. California*, 143 S. Ct. 739 (2023) (No. 22-6071); *Poore v. California*, 143 S. Ct. 494 (2022) (No. 22-5695); *Gonzalez v. California*, 142 S. Ct. 2719 (2022) (No. 21-7296); *Scully v. California*, 142 S.Ct. 1153 (2022) (No. 21-6669); *Johnsen v. California*, 142 S. Ct. 353 (2021) (No. 21-5012); *Vargas v. California*, 141 S. Ct. 1411 (2021) (No. 20-6633); *Caro v. California*, 140 S. Ct. 2682 (2020) (No. 19-7649); *Mitchell v. California*, 140 S. Ct. 2535 (2020) (No. 19-7429); *Capers v. California*, 140 S. Ct. 2532 (2020) (No. 19-7379); *Erskine v. California*, 140 S. Ct. 602 (2019) (No. 19-6235); *Mendez v. California*, 140 S. Ct. 471 (2019) (No. 19-5933); *Bell v. California*, 140 S. Ct. 294 (2019) (No. 19-5394); *Gomez v. California*, 140 S. Ct. 120 (2019) (No. 18-9698); *Case v. California*, 139 S. Ct. 1342 (2019) (No. 18-7457); *Penunuri v. California*, 139 S. Ct. 644 (2018) (No. 18-6262); *Henriquez v. California*, 139 S. Ct. 261 (2018) (No. 18-5375); *Wall v. California*, 139 S. Ct. 187 (2018) (No. 17-9525); *Brooks v. California*, 138 S. Ct. 516 (2017) (No. 17-6237); *Becerrada v. California*, 138 S. Ct. 242 (2017) (No. 17-5287); *Thompson v. California*, 138 S. Ct. 201 (2017) (No. 17-5069); *Landry v. California*, 138 S. Ct. 79 (2017) (No. 16- 9001); *Mickel v. California*, 137 S. Ct. 2214 (2017) (No. 16-7840); *Jackson v. California*, 137 S. Ct. 1440 (2017) (No. 16-7744); *Rangel v. California*, 137 S. Ct. 623 (2017) (No. 16-5912); *Johnson v. California*, 577 U.S. 1158 (2016) (No. 15-7509); *Cunningham v. California*, 577 U.S. 1123 (2016) (No. 15-7177); *Lucas v. California*, 575 U.S. 1041 (2015) (No. 14-9137); *Boyce v. California*, 574 U.S. 1169 (2015) (No. 14-7581); *DeBose v.*

1. A California death sentence depends on a two-stage process prescribed by California Penal Code Sections 190.1 through 190.9. At the first stage, the guilt phase, the jury initially determines whether the defendant committed first degree murder. Under California law, that crime carries three potential penalties: 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, in addition to finding the defendant guilty of first degree murder, the jury also finds true one or more statutorily enumerated special circumstances. *Id.* §§ 190.2(a), 190.4. The jury’s findings on these special circumstances are also made during the guilt phase of a capital defendant’s trial, and a “true” finding must be unanimous and beyond a reasonable doubt. *Id.* § 190.4(a), (b).

During the guilt phase of petitioner’s trial, the jury found him guilty of first degree murder and found the rape-murder special circumstance allegation to be true. Pet. App. A 1. The jury’s findings were unanimous and made under the beyond-a-reasonable-doubt standard. 2 CT 458, 506-507.

California, 574 U.S. 1051 (2014) (No. 14-6617); *Blacksher v. California*, 565 U.S. 1209 (2012) (No. 11-7741); *Taylor v. California*, 562 U.S. 1013 (2010) (No. 10-6299); *Bramit v. California*, 558 U.S. 1031 (2009) (No. 09- 6735); *Morgan v. California*, 552 U.S. 1286 (2008) (No. 07-9024); *Cook v. California*, 552 U.S. 976 (2007) (No. 07-5690); *Huggins v. California*, 549 U.S. 998 (2006) (No. 06-6060); *Harrison v. California*, 546 U.S. 890 (2005) (No. 05-5232); *Smith v. California*, 540 U.S. 1163 (2004) (No. 03-6862); *Prieto v. California*, 540 U.S. 1008 (2003) (No. 03-6422).

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 “[t]he circumstances of the crime of which the defendant was convicted” and “[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. Petitioner contends California’s capital sentencing statute is unconstitutional because it does not require the jury during the penalty phase

to find the existence of an aggravating factor beyond a reasonable doubt, or to find that the aggravating factors outweigh the mitigating factors beyond a reasonable doubt. Pet. 9-18. But the Constitution does not impose such requirements. In support of his contentions, petitioner primarily relies 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). Pet. 9-16. California law is consistent with this rule because 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. *See People v. Prince*, 40 Cal. 4th 1179, 1297-1298 (2007); *see generally Tuilaepa v. California*, 512 U.S. 967, 971-972 (1994) (“To render a defendant eligible for the death penalty in a homicide case, we have indicated that the trier of fact must convict the defendant of murder and find one ‘aggravating circumstance’ (or its equivalent) at either the guilt or penalty phase”). 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, petitioner cites *Hurst v. Florida*, 577 U.S. 92, 94-95, 98, 100 (2016). Pet. 9-11, 13, 16. Under the Florida system considered

in *Hurst*, after a jury verdict of first degree murder, a convicted defendant was not “eligible for death,” 577 U.S. at 99-100, 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,” 577 U.S. at 96 (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 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.” *Hurst*, 577 U.S. at 99.

In contrast, under California law, a defendant is eligible for a death sentence once the jury finds true at least one of the special circumstances in California Penal Code Section 190.2(a). *See McKinney v. Arizona*, 140 S. Ct. 702, 707-708 (2020) (“Under *Ring* and *Hurst*, a jury must find the aggravating circumstance that makes the defendant death eligible.”). 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, 577 U.S. 108 (2016), effectively forecloses any 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 119. 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”).

This Court further 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.” *Carr*, 577 U.S. at 119. That reasoning leaves no room for petitioner’s argument that the Constitution requires a capital sentencing jury to determine the relative weight of the aggravating and mitigating factors beyond a reasonable doubt.

CONCLUSION

The petition for a writ of certiorari should be denied.

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