SUPREME COURT OF THE UNITED STATES

No. 91-5843

DENNIS SOCHOR, PETITIONER *v.* FLORIDA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

[June 8, 1992]

JUSTICE SCALIA, concurring in part and dissenting in part.

I join the Court's opinion insofar as it rejects petitioner's challenge to the heinous, atrocious, and cruel aggravating factor. I dissent, however, from its holding that the death sentence in this case is unconstitutional because the Florida Supreme Court failed to find "harmless error" after having invalidated the trial judge's "coldness" finding.

Even without that finding, three unquestionably valid aggravating factors remained, so that the death sentence complied with the so-called "narrowing" requirement imposed by the line of cases commencing with *Furman* v. *Georgia*, 408 U. S. 238 (1972). The constitutional "error" whose harmlessness is at issue, then, concerns only the inclusion of the "coldness" factor in the weighing of the aggravating factors against the mitigating evidence petitioner offered. It has been my view that the Eighth Amendment does not require any consideration of mitigating evidence, see *Walton* v. *Arizona*, 497 U. S. 639, —— (1990) (opinion concurring in part and concurring in judgment)—a view I am increasingly confirmed in, as the byzantine complexity of the death-penalty jurisprudence we are annually accreting becomes more and more apparent. Since the weighing here was in my view not constitutionally required, any error in the doing of it raised no federal question. For that reason, I would affirm the death sentence.