SUPREME COURT OF THE UNITED STATES

No. 92–5653

DORSIE LEE JOHNSON, JR., PETITIONER *v.* TEXAS

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

[June 24, 1993]

JUSTICE SCALIA, concurring.

In my view the *Lockett–Eddings* principle that the sentencer must be allowed to consider "all relevant mitigating evidence" is quite incompatible with the *Furman* principle that the sentencer's discretion must be channeled. See *Walton* v. *Arizona*, 497 U. S. 639, 656 (1990) (SCALIA, J., concurring in part and concurring in judgment). That will continue to be true unless and until the sort of "channeling" of mitigating discretion that Texas has engaged in here is not merely *permitted* (as the Court today holds), but positively *required*—a further elaboration of our intricate Eighth Amendment jurisprudence that I neither look forward to nor would support.

Today's decision, however, is simply a clarification (and I think a plainly correct one) of this Court's opinions in *Franklin* v. *Lynaugh*, 487 U. S. 164 (1988) (plurality opinion), and *Boyde* v. *California*, 494 U. S. 370 (1990), which I joined. In fact, the essence of today's holding (to the effect that discretion *may* constitutionally be channeled) was set forth in my dissent in *Penry* v. *Lynaugh*, 492 U. S. 302, 350 (1989) (SCALIA, J., concurring in part and dissenting in part). Accordingly, I join the opinion of the Court.