NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

JOHNSON *v.* TEXAS

CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

No. 92–5653. Argued April 26, 1993—Decided June 24, 1993

A jury found petitioner Johnson guilty of capital murder for a crime he committed when he was 19 years old. In conformity with the Texas capital sentencing statute then in effect, the trial court instructed the jury during the trial's penalty phase to answer two special issues: (1) whether Johnson's conduct was committed deliberately and with the reasonable expectation that death would result, and (2) whether there was a probability that he would commit criminal acts of violence that would constitute a continuing threat to society. The jury was also instructed, *inter alia,* that in determining each of these issues, it could take into consideration all the evidence submitted to it, whether aggravating or mitigating, in either phase of the trial. A unanimous jury answered yes to both special issues, and the trial court sentenced Johnson to death, as required by law. Shortly after the State Court of Criminal Appeals affirmed the conviction and sentence, this Court issued *Penry* v. *Lynaugh,* 492 U. S. 302. In denying Johnson's motion for rehearing, the state appellate court rejected his contentions that the special issues did not allow his jury to give adequate mitigating effect to evidence of his youth and that *Penry* required a separate instruction on the question.

Held: The Texas procedures as applied in this case were consistent with the Eighth and Fourteenth Amendments under this Court's precedents. Pp. 8–22.

(a) A review of the Court's relevant decisions demonstrates the constitutional requirements regarding consideration of mitigating circumstances by sentencers in capital cases. Although the sentencer cannot be precluded from considering, as a mitigating factor, any aspect of the defendant's character or record and any of the circumstances of the particular offense that the defendant proffers as a basis for a sentence less than death, see, *e.g., Lockett* v. *Ohio,* 438 U. S. 586, 604 (plurality opinion); *Eddings* v. *Oklahoma,* 455 U. S. 104, States are free to

structure and shape consideration of mitigating evidence in an effort to achieve a more rational and equitable administration of the death penalty, see, *e.g., Boyde* v. *California,* 494 U. S. 370, 377. Pp. 8–11.

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(b) The Texas law under which Johnson was sentenced has been the principal concern of a series of opinions in this Court. Although, in *Jurek* v. *Texas,* 428 U. S. 262, 276, 277, six Justices agreed that, as a general matter, the special issues system satisfied the foregoing constitutional requirements, the Court later held, in *Penry* v. *Lynaugh, supra,* that the system did not allow for sufficient consideration of the defendant's mitigating evidence of his mental retardation and childhood abuse in light of his particular circumstances, *id.,* at 320–323, and that the trial court erred in not instructing the jury that it could consider and give effect to that mitigating evidence by declining to impose the death penalty, *id.,* at 329. However, the Court concluded that it was not creating a ``new rule,'' *id.,* at ___, and characterized its holding as a straightforward application of *Jurek, Lockett,* and *Eddings,* making it clear that these cases can stand together with *Penry,* see 492 U. S., at 314–318. The Court confirmed this limited view of *Penry* and its scope in *Graham* v. *Collins,* 506 U. S. ___, ___, and held that the defendant's mitigating evidence of his youth, family background, and positive character traits was not placed beyond the jury's effective reach by the Texas scheme, *id.,* at ___. Pp. 11–15.

(c) The Texas special issues allowed adequate consideration of Johnson's youth. There is no reasonable likelihood, see *Boyde, supra,* at 380, that Johnson's jury would have found itself foreclosed from considering the relevant aspects of his youth, since it received the second special issue instruction and was told to consider all mitigating evidence. That there is ample room in the future dangerousness assessment for a juror to take account of youth as a mitigating factor is what distinguishes this case from *Penry, supra,* at 323. There, the second special issue did not allow the jury to give mitigating effect to expert medical testimony that the defendant's mental retardation prevented him from learning from experience, since that evidence could only logically be considered within the future dangerousness inquiry as an aggravating factor. In contrast, youth's ill effects are subject to change as a defendant ages and, as a result, are readily comprehended as a mitigating factor in consideration of the second special issue. Because such consideration is a comprehensive inquiry that is more than a question of historical fact, the Court rejects Johnson's related arguments that the second special issue's forward-looking perspective and narrowness prevented the jury from, respectively, taking account of how his youth bore upon his personal culpability and making a ``reasoned moral response'' to the evidence of his youth. For the Court to find a

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constitutional defect in Johnson's sentence, it would have to overrule *Jurek* by requiring a further instruction whenever a defendant introduced mitigating evidence that had *some* arguable relevance beyond the special issues; alter the rule of *Lockett and Eddings* to require that a jury be able to give effect to mitigating evidence in every conceivable manner in which it might be relevant; and remove the States' power to structure the consideration of mitigating evidence under, *e.g., Boyde.* Pp. 15–22.

773 S. W. 2d 322, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, SCALIA, and THOMAS, JJ., joined. SCALIA, J., and THOMAS, J., filed concurring opinions. O'CONNOR, J., filed a dissenting opinion, in which BLACKMUN, STEVENS, and SOUTER, JJ., joined.