SUPREME COURT OF THE UNITED STATES

No. 92–9059

JONATHAN DALE SIMMONS, PETITIONER *v.* SOUTH CAROLINA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

[June 17, 1994]

JUSTICE SOUTER, with whom JUSTICE STEVENS joins, concurring.

I join in JUSTICE BLACKMUN's opinion that, at least when future dangerousness is an issue in a capital sentencing determination, the defendant has a due process right to require that his sentencing jury be informed of his ineligibility for parole. I write separately because I believe an additional, related principle also compels today's decision, regardless of whether future dangerousness is an issue at sentencing.

The Eighth Amendment entitles a defendant to a jury capable of a reasoned moral judgment about whether death, rather than some lesser sentence, ought to be imposed. The Court has explained that the Amendment imposes a heightened standard "for reliability in the determination that death is the appropriate punishment in a specific case," *Woodson* v. *North Carolina*, 428 U. S. 280, 305 (1976) (opinion of Stewart, Powell, and STEVENS, JJ.); see also, *e.g.*, *Godfrey* v. *Georgia*, 446 U. S. 420, 427–428 (1980); *Mills* v. *Maryland*, 486 U. S. 367, 383–384 (1988). Thus, it requires provision of "accurate sentencing information [as] an indispensable prerequisite to a reasoned determination of whether a defendant shall live or die," *Gregg* v. *Georgia*, 428 U. S. 153, 190 (1976) (opinion of Stewart, Powell, and STEVENS, JJ.), and invalidates "procedural rules that ten[d] to diminish the reliability of the sentencing determination," *Beck* v. *Alabama*, 447 U. S. 625, 638 (1980).

That same need for heightened reliability also mandates recognition of a capital defendant's right to require instructions on the meaning of the legal terms used to describe the sentences (or sentencing recommendations) a jury is required to consider, in making the reasoned moral choice between sentencing alternatives. Thus, whenever there is a reasonable likelihood that a juror will misunderstand a sentencing term, a defendant may demand instruction on its meaning, and a death sentence following the refusal of such a request should be vacated as having been "arbitrarily or capriciously" and "wantonly and . . . freakishly imposed." *Furman* v. *Georgia*, 408 U. S. 238, 249 (1972) (Douglas, J., concurring); *id*., at 310 (Stewart, J., concurring).

While I join the other Members of the Court's majority in holding that, at least, counsel ought to be permitted to inform the jury of the law that it must apply, see *ante*, at 15 (plurality opinion); *post*, at 1 (GINSBURG, J., concurring); *post*, at 3–4 (O'CONNOR, J., concurring in judgment), I also accept the general rule that, on matters of law, arguments of counsel do not effectively substitute for statements by the court.

> "[A]rguments of counsel generally carry less weight with a jury than do instructions from the court. The former are usually billed in advance to the jury as matters of argument, not evidence, and are likely viewed as the statements of advocates; the latter, we have often recognized, are viewed as definitive and binding statements of the law." *Boyde* v. *California*, 494 U. S. 370, 384 (1990) (citation omitted).

I would thus impose that straightforward duty on the court.

Because JUSTICE BLACKMUN persuasively demonstrates that juries in general are likely to misunderstand the meaning of the term "life imprisonment" in a given context, see *ante*, at 4–5, 15–16, and n. 9, the judge must tell the jury what the

term means, when the defendant so requests. It is, moreover, clear that at least one of these particular jurors did not understand the meaning of the term, since the jury sent a note to the judge asking, "Does the imposition of a life sentence carry with it the possibility of parole?" *Ante*, at 5, 16, n. 10. The answer here was easy and controlled by state statute. The judge should have said no. JUSTICE BLACKMUN shows that the instruction actually given was at best a confusing, "equivocal direction to the jury on a basic issue," *Bollenbach* v. *United States*, 326 U. S. 607, 613 (1946), and that "there is a reasonable likelihood that the jury has applied the challenged instruction in a way" that violated petitioner's rights. *Boyde*, *supra*, at 380. By effectively withholding from the jury the life-without-parole alternative, the trial court diminished the reliability of the jury's decision that death, rather than that alternative, was the appropriate penalty in this case.

While States are, of course, free to provide more protection for the accused than the Constitution requires, see *California* v. *Ramos*, 463 U. S. 992, 1014 (1983), they may not provide less. South Carolina did so here. For these reasons, as well as those set forth by JUSTICE BLACKMUN, whose opinion I join, the judgment of the Supreme Court of South Carolina must be reversed.