

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 GINSBURG, concurring.

This case is most readily resolved under a core requirement of due process, the right to be heard. *Crane v. Kentucky*, 476 U. S. 683, 690 (1986). When the prosecution urges a defendant's future dangerousness as cause for the death sentence, the defendant's right to be heard means that he must be afforded an opportunity to rebut the argument. See *Skipper v. South Carolina*, 476 U. S. 1, 5, n. 1 (1986). To be full and fair, that opportunity must include the right to inform the jury, if it is indeed the case, that the defendant is ineligible for parole. JUSTICE BLACKMUN's opinion is in accord with JUSTICE O'CONNOR's on this essential point. See *ante*, at 9, 11, 14-15; *post*, at 2-4.

As a subsidiary matter, JUSTICE O'CONNOR's opinion clarifies that the due process requirement is met if the relevant information is intelligently conveyed to the jury; due process does not dictate that the judge herself, rather than defense counsel, provide the instruction. See *post*, at 3-4. I do not read JUSTICE BLACKMUN's opinion to say otherwise.¹ And I note that the trial court here not only refused to instruct the jury that in this case life means "life without parole"; the court also ordered petitioner's counsel to refrain

¹Compare *ante*, at 7, n. 4 (refraining from addressing Simmons' Eighth Amendment claim), with *ante*, at 2-3 (SOUTER, J., concurring) (Eighth Amendment requires judge to instruct jury about parole ineligibility).

from saying anything to the jury about parole
ineligibility. App. 55-57.

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On these understandings, I concur in JUSTICE
BLACKMUN's opinion.