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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 BLACKMUN announced the judgment of the Court and delivered an opinion in which JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE GINSBURG join.

This case presents the question whether the Due Process Clause of the Fourteenth Amendment was violated by the refusal of a state trial court to instruct the jury in the penalty phase of a capital trial that under state law the defendant was ineligible for parole. We hold that where the defendant's future dangerousness is at issue, and state law prohibits the defendant's release on parole, due process requires that the sentencing jury be informed that the defendant is parole ineligible.

In July 1990, petitioner beat to death an elderly woman, Josie Lamb, in her home in Columbia, South Carolina. The week before petitioner's capital murder trial was scheduled to begin, he pleaded guilty to first degree burglary and two counts of criminal sexual conduct in connection with two prior assaults on elderly women. Petitioner's guilty pleas resulted in convictions for violent offenses, and those convictions rendered

petitioner ineligible for parole if convicted for any subsequent violent-crime offense. S.C. Code Ann. §24–21–640 (Supp. 1993).

Prior to jury selection, the prosecution advised the trial judge that the State "[o]bviously [was] going to ask you to exclude any mention of parole throughout this trial." App. 2. Over defense counsel's objection, the trial court granted the prosecution's motion for an order barring the defense from asking any question during *voir dire* regarding parole. Under the court's order, defense counsel was forbidden even to mention the subject of parole, and expressly was prohibited from questioning prospective jurors as to whether they understood the meaning of a "life" sentence under South Carolina law.[1] After a 3–day trial, petitioner was convicted of the murder of Ms. Lamb.

During the penalty phase, the defense brought forward mitigating evidence tending to show that petitioner's violent behavior reflected serious mental disorders that stemmed from years of neglect and extreme sexual and physical abuse petitioner endured as an adolescent. While there was some disagreement among witnesses regarding the extent to which petitioner's mental condition properly could be deemed a "disorder," witnesses for both the defense and the prosecution agreed that petitioner posed a continuing danger to elderly women.

In its closing argument the prosecution argued that petitioner's future dangerousness was a factor for the jury to consider when fixing the appropriate punishment. The question for the jury, said the prosecution,

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[1]The venire was informed, however, of the meaning of the term "death" under South Carolina law. The trial judge specifically advised the prospective jurors that "[b]y the death penalty, we mean death by electrocution." The sentencing jury was also so informed. App. 129.

was "what to do with [petitioner] now that he is in our midst." *Id*., at 110. The prosecution further urged that a verdict for death would be "a response of society to someone who is a threat. Your verdict will be an act of self-defense." *Ibid*.

Petitioner sought to rebut the prosecution's generalized argument of future dangerousness by presenting evidence that, due to his unique psychological problems, his dangerousness was limited to elderly women, and that there was no reason to expect further acts of violence once he was isolated in a prison setting. In support of his argument, petitioner introduced testimony from a female medical assistant and from two supervising officers at the Richland County jail where petitioner had been held prior to trial. All three testified that petitioner had adapted well to prison life during his pretrial confinement and had not behaved in a violent manner toward any of the other inmates or staff. Petitioner also offered expert opinion testimony from Richard L. Boyle, a clinical social worker and former correctional employee, who had reviewed and observed petitioner's institutional adjustment. Mr. Boyle expressed the view that, based on petitioner's background and his current functioning, petitioner would successfully adapt to prison if he was sentenced to life imprisonment.

Concerned that the jury might not understand that "life imprisonment" did not carry with it the possibility of parole in petitioner's case, defense counsel asked the trial judge to clarify this point by defining the term "life imprisonment" for the jury in accordance with S.C. Code §24–21–640 (Supp. 1993).[2]

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[2]Section 24–21–640 states: "The board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing from a prior conviction, for violent crimes as defined in

To buttress his request, petitioner proffered, outside the presence of the jury, evidence conclusively establishing his parole ineligibility. On petitioner's behalf, attorneys for the South Carolina Department of Corrections and the Department of Probation, Parole and Pardons testified that any offender in petitioner's position was in fact ineligible for parole under South Carolina law. The prosecution did not challenge or question petitioner's parole ineligibility. Instead, it sought to elicit admissions from the witnesses that, notwithstanding petitioner's parole ineligibility, petitioner might receive holiday furloughs or other forms of early release. Even this effort was unsuccessful, however, as the cross-examination revealed that Department of Corrections regulations prohibit petitioner's release under early release programs such as work-release or supervised furloughs, and that no convicted murderer serving life without parole ever had been furloughed or otherwise released for any reason.

Petitioner then offered into evidence, without objection, the results of a statewide public-opinion survey conducted by the University of South Carolina's Institute for Public Affairs. The survey had been conducted a few days before petitioner's trial, and showed that only 7.1 percent of all jury-eligible adults who were questioned firmly believed that a inmate sentenced to life imprisonment in South Carolina actually would be required to spend the rest of his life in prison. See App. 152–154. Almost half of those surveyed believed that a convicted murderer might be paroled within 20 years; nearly three-quarters thought that release certainly would occur in less than 30 years. *Ibid.* More than 75 percent of

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Section 16–1–60.” Petitioner's earlier convictions for burglary in the first degree and criminal sexual assault in the first degree are violent offenses under §16–1–60.

those surveyed indicated that if they were called upon to make a capital-sentencing decision as jurors, the amount of time the convicted murderer actually would have to spend in prison would be an "extremely important" or a "very important" factor in choosing between life and death. *Id.*, at 155.

Petitioner argued that, in view of the public's apparent misunderstanding about the meaning of "life imprisonment" in South Carolina, there was a reasonable likelihood that the jurors would vote for death simply because they believed, mistakenly, that petitioner eventually would be released on parole.

The prosecution opposed the proposed instruction, urging the court "not to allow . . . any argument by state or defense about parole and not charge the jury on anything concerning parole." *Id.*, at 37. Citing the South Carolina Supreme Court's opinion in *State* v. *Torrence*, 305 S.C. 45, 406 S.E. 2d 315 (1991), the trial court refused petitioner's requested instruction. Petitioner then asked alternatively for the following instruction:

> "I charge you that these sentences mean what they say. That is, if you recommend that the defendant Jonathan Simmons be sentenced to death, he actually will be sentenced to death and executed. If, on the other hand, you recommend that he be sentenced to life imprisonment, he actually will be sentenced to imprisonment in the state penitentiary for the balance of his natural life.
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> "In your deliberations, you are not to speculate that these sentences mean anything other than what I have just told you, for what I have told you is exactly what will happen to the defendant, depending on what your sentencing decision is." App. 162.

The trial judge also refused to give this instruction, but indicated that he might give a similar instruction if the jury inquired about parole eligibility.

After deliberating on petitioner's sentence for 90 minutes, the jury sent a note to the judge asking a single question: "Does the imposition of a life sentence carry with it the possibility of parole?" *Id.*, at 145. Over petitioner's objection, the trial judge gave the following instruction:

> "You are instructed not to consider parole or parole eligibility in reaching your verdict. Do not consider parole or parole eligibility. That is not a proper issue for your consideration. The terms life imprisonment and death sentence are to be understood in their plan [sic] and ordinary meaning." *Id.*, at 146.

Twenty-five minutes after receiving this response from the court, the jury returned to the courtroom with a sentence of death.

On appeal to the South Carolina Supreme Court, petitioner argued that the trial judge's refusal to provide the jury accurate information regarding his parole ineligibility violated the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment.[3] The South Carolina Supreme Court

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[3]Specifically, petitioner argued that under the Eighth Amendment his parole ineligibility was "`mitigating' in the sense that [it] might serve `as a basis for a sentence less than death,'" *Skipper* v. *South Carolina*, 476 U. S. 1, 4–5 (1986), quoting *Lockett* v. *Ohio*, 438 U. S. 586, 604 (1978)(plurality opinion), and that therefore he was entitled to inform the jury of his parole ineligibility. He also asserted that by withholding from the jury the fact that it had a life-without-parole sentencing alternative, the trial court impermissibly diminished the reliability of the jury's determination that death was the appropriate punishment. Cf. *Beck* v. *Alabama*, 447 U. S. 625 (1980). Finally, relying on the authority of *Gardner* v. *Florida*, 430 U. S. 349 (1977), petitioner argued that his due process right to rebut the State's argument

declined to reach the merits of petitioner's challenges. With one Justice dissenting, it concluded that, regardless of whether a trial court's refusal to inform a sentencing jury about a defendant's parole ineligibility might be error under some circumstances, the instruction given to petitioner's jury “satisfie[d] in substance [petitioner's] request for a charge on parole ineligibility,” and thus there was no reason to consider whether denial of such an instruction would be constitutional error in this case. *State* v. *Simmons*, ___ S.C. ___, ___, 427 S.E. 2d 175, 179 (1993). We granted certiorari, __ U. S. __ (1993).

The Due Process Clause does not allow the execution of a person “on the basis of information which he had no opportunity to deny or explain.” *Gardner* v. *Florida*, 430 U. S., at 362. In this case, the jury reasonably may have believed that petitioner could be released on parole if he were not executed. To the extent this misunderstanding pervaded the jury's deliberations, it had the effect of creating a false choice between sentencing petitioner to death and sentencing him to a limited period of incarceration. This grievous misperception was encouraged by the trial court's refusal to provide the jury with accurate information regarding petitioner's parole ineligibility, and by the State's repeated suggestion that petitioner would pose a future danger to society if he were not executed. Three times petitioner asked to inform the jury that in fact he was ineligible for parole under state law; three times his request was denied. The State thus succeeded in securing a

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that petitioner posed a future danger to society had been violated by the trial court's refusal to permit him to show that a noncapital sentence adequately could protect the public from any future acts of violence by him.

death sentence on the ground, at least in part, of petitioner's future dangerousness, while at the same time concealing from the sentencing jury the true meaning of its noncapital sentencing alternative, namely, that life imprisonment meant life without parole. We think it is clear that the State denied petitioner due process.[4]

This Court has approved the jury's consideration of future dangerousness during the penalty phase of a capital trial, recognizing that a defendant's future dangerousness bears on all sentencing determinations made in our criminal justice system. See *Jurek* v. *Texas*, 428 U. S. 262, 275 (1976) (plurality opinion) (noting that "any sentencing authority must predict a convicted person's probable future conduct when it engages in the process of determining what punishment to impose"); *California* v. *Ramos*, 463 U. S. 992, 1003, n. 17 (1983) (explaining that it is proper for a sentencing jury in a capital case to consider "the defendant's potential for reform and whether his probable future behavior counsels against the desirability of his release into society").

Although South Carolina statutes do not mandate consideration of the defendant's future dangerousness in capital sentencing, the State's evidence in aggravation is not limited to evidence relating to statutory aggravating circumstances. See *Barclay* v. *Florida*, 463 U. S. 939, 948–951 (1983) (plurality opinion); *California* v. *Ramos*, 463 U. S., at 1008 ("Once the jury finds that the defendant falls within the legislatively defined category of persons eligible for the death penalty . . . the jury then is free

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[4]We express no opinion on the question whether the result we reach today is also compelled by the Eighth Amendment.

to consider a myriad of factors to determine whether death is the appropriate punishment”). Thus, prosecutors in South Carolina, like those in other States that impose the death penalty, frequently emphasize a defendant's future dangerousness in their evidence and argument at the sentencing phase; they urge the jury to sentence the defendant to death so that he will not be a danger to the public if released from prison. Eisenberg & Wells, Deadly Confusion: Juror Instructions in Capital Cases, 79 Cornell L. Rev. 1, 4 (1993).

Arguments relating to a defendant's future dangerousness ordinarily would be inappropriate at the guilt phase of a trial, as the jury is not free to convict a defendant simply because he poses a future danger; nor is a defendant's future dangerousness likely relevant to the question whether each element of an alleged offense has been proved beyond a reasonable doubt. But where the jury has sentencing responsibilities in a capital trial, many issues that are irrelevant to the guilt-innocence determination step into the foreground and require consideration at the sentencing phase. The defendant's character, prior criminal history, mental capacity, background, and age are just a few of the many factors, in addition to future dangerousness, that a jury may consider in fixing appropriate punishment. See *Lockett* v. *Ohio*, 438 U. S. 586 (1978); *Eddings* v. *Oklahoma*, 455 U. S. 104, 110 (1982); *Barclay* v. *Florida*, 463 U. S., at 948–951.

In assessing future dangerousness, the actual duration of the defendant's prison sentence is indisputably relevant. Holding all other factors constant, it is entirely reasonable for a sentencing jury to view a defendant who is eligible for parole as a greater threat to society than a defendant who is not. Indeed, there may be no greater assurance of a defendant's future nondangerousness to the public than the fact that he never will be released on parole.

The trial court's refusal to apprise the jury of information so crucial to its sentencing determination, particularly when the prosecution alluded to the defendant's future dangerousness in its argument to the jury, cannot be reconciled with our well-established precedents interpreting the Due Process Clause.

In *Skipper* v. *South Carolina*, 476 U. S. 1 (1986), this Court held that a defendant was denied due process by the refusal of the state trial court to admit evidence of the defendant's good behavior in prison in the penalty phase of his capital trial. Although the majority opinion stressed that the defendant's good behavior in prison was "relevant evidence in mitigation of punishment," and thus admissible under the Eighth Amendment, *id*., at 4, citing *Lockett* v. *Ohio*, 438 U. S. 586, 604 (1978) (plurality opinion), the *Skipper* opinion expressly noted that the Court's conclusion also was compelled by the Due Process Clause. The Court explained that where the prosecution relies on a prediction of future dangerousness in requesting the death penalty, elemental due process principles operate to require admission of the defendant's relevant evidence in rebuttal. 476 U. S., at 5, n. 1. See also *id*., at 9 (Powell, J., opinion concurring in judgment) ("[B]ecause petitioner was not allowed to rebut evidence and argument used against him," the defendant clearly was denied due process).

The Court reached a similar conclusion in *Gardner* v. *Florida*, 430 U. S. 349 (1977). In that case, a defendant was sentenced to death on the basis of a presentence report which was not made available to him and which he therefore could not rebut. A plurality of the Court explained that sending a man to his death "on the basis of information which he had no opportunity to deny or explain" violated

fundamental notions of due process. *Id*., at 362. The principle announced in *Gardner* was reaffirmed in *Skipper*, and it compels our decision today. See also *Crane* v. *Kentucky*, 476 U. S. 683, 690 (1986) (due process entitles a defendant to "`a meaningful opportunity to present a complete defense'") (citation omitted); *Ake* v. *Oklahoma*, 470 U. S. 68, 83–87 (1985) (where the State presents psychiatric evidence of a defendant's future dangerousness at a capital sentencing proceeding, due process entitles an indigent defendant to the assistance of a psychiatrist for the development of his defense).

Like the defendants in *Skipper* and *Gardner*, petitioner was prevented from rebutting information that the sentencing authority considered, and upon which it may have relied, in imposing the sentence of death. The State raised the specter of petitioner's future dangerousness generally, but then thwarted all efforts by petitioner to demonstrate that, contrary to the prosecutor's intimations, he never would be released on parole and thus, in his view, would not pose a future danger to society.[5] The logic and effectiveness of petitioner's argument naturally depended on the fact that he was legally ineligible for

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[5]Of course, the fact that a defendant is parole ineligible does not prevent the State from arguing that the defendant poses a future danger. The State is free to argue that the defendant will pose a danger to others in prison and that executing him is the only means of eliminating the threat to the safety of other inmates or prison staff. But the State may not mislead the jury by concealing accurate information about the defendant's parole ineligibility. The Due Process Clause will not tolerate placing a capital defendant in a straitjacket by barring him from rebutting the prosecution's arguments of future dangerousness with the fact that he is ineligible for parole under state law.

parole and thus would remain in prison if afforded a life sentence. Petitioner's efforts to focus the jury's attention on the question whether, in prison, he would be a future danger were futile, as he repeatedly was denied any opportunity to inform the jury that he never would be released on parole. The jury was left to speculate about petitioner's parole eligibility when evaluating petitioner's future dangerousness, and was denied a straight answer about petitioner's parole eligibility even when it was requested.

The State and its *amici* contend that petitioner was not entitled to an instruction informing the jury that petitioner is ineligible for parole because such information is inherently misleading.[6] Essentially, they argue that because future exigencies such as legislative reform, commutation, clemency, and escape might allow petitioner to be released into society, petitioner was not entitled to inform the jury that he is parole ineligible. Insofar as this argument is targeted at the specific wording of the instruction petitioner requested, the argument is misplaced. Petitioner's requested instruction ("If . . . you recommend that [the defendant] be sentenced to life imprisonment, he actually will be sentenced to imprisonment in the state penitentiary for the balance of his natural life," App. 162) was proposed

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[6]In this regard, the State emphasizes that no statute prohibits petitioner's eventual release into society. While this technically may be true, state regulations unambiguously prohibit work-release and virtually all other furloughs for inmates who are ineligible for parole. See App. 16. As for pardons, the statute itself provides that they are available only in "the most extraordinary circumstances." S.C. Code Ann. §24–21–950D (1989).

only after the trial court ruled that South Carolina law prohibited a plain-language instruction that petitioner was ineligible for parole under state law. To the extent that the State opposes even a simple parole-ineligibility instruction because of hypothetical future developments, the argument has little force. Respondent admits that an instruction informing the jury that petitioner is ineligible for parole is legally accurate. Certainly, such an instruction is more accurate than no instruction at all, which leaves the jury to speculate whether "life imprisonment" means life without parole or something else.

The State's asserted accuracy concerns are further undermined by the fact that a large majority of States which provide for life imprisonment without parole as an alternative to capital punishment inform the sentencing authority of the defendant's parole ineligibility.[7] The few States that do not provide

[7]At present, there are 26 States that both employ juries in capital sentencing and provide for life imprisonment without parole as an alternative to capital punishment. In 17 of these, the jury expressly is informed of the defendant's ineligibility for parole. Nine States simply identify the jury's sentencing alternatives as death and life without parole. See Ala. Code §13A-5–46(e) (1982); Ark. Code Ann. §5–4–603(b) (1993); Cal. Penal Code Ann. §190.3 (West 1988); Conn. Gen. Stat. §53a-46a(f) (1985); Del. Code Ann. Tit. 11, §4209(a) (1987); La. Code Crim. Proc. Ann. Art. 905.6 (West Supp. 1994); Mo. Rev. Stat. §565.030.4 (1993); N.H. Rev. Stat. Ann. §630:5 (Supp. 1992); Wash. Rev. Code §10.95.030 (Supp. 1994). Eight States allow the jury to specify whether the defendant should or should not be eligible for parole. See Ga. Code Ann. §17–10–31.1(a) (1993); Ind. Code §35–50–2–9 (Supp. 1993); Md. Ann. Code, Art. 27, §413(c)(3) (Supp. 1993); Nev. Rev. Stat. §175.554(2)(c)(2) (Michie Supp. 1993); Okla. Stat. Ann. Tit. 21,

capital-sentencing juries with any information regarding parole ineligibility seem to rely, as South Carolina does here, on the proposition that *California* v. *Ramos*, 463 U. S. 992 (1983), held that such determinations are purely matters of state law.[8]

It is true that *Ramos* stands for the broad proposition that we generally will defer to a State's determination as to what a jury should and should not

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701.10 (A) (Supp. 1994); Ore. Rev. Stat. §163.105 (1991); Tenn. Code Ann. §39–13–204(a)-(f)(2) (Supp. 1993); Utah Code Ann. §76–3–207 (4) (Supp. 1993).

In three States, statutory or decisional law requires that the sentencing jury be instructed, where accurate, that the defendant will be ineligible for parole. See Colo. Rev. Stat. §16–11–103(1)(b) (Supp. 1993); *People* v. *Gacho*, 122 Ill. 2d 221, 262, 522 N.E. 2d 1146, 1166 (1988); *Turner* v. *State*, 573 So. 2d 657, 675 (Miss. 1990), cert. denied, __ U. S. __ (1991).

Three States have not considered the question whether jurors should be instructed that the defendant is ineligible for parole under state law. See Fla. Stat. §775.0823(1) (Supp. 1994); S.D. Codified Laws §24–15–4 (1988); Wyo. Stat. §§6–2–101(b), 7–13–402(a) (Supp. 1993). The Florida Supreme Court, however, has approved for publication pattern jury instructions that inform capital sentencing juries of the no-parole feature of Fla. Stat. §775.0823(1). See Standard Jury Instructions—Criminal Cases, 603 So.2d 1175, 1205 (Fla. 1992).

Finally, there are four States in which the capital sentencing decision is made by the trial judge alone or by a sentencing panel of judges. Thus, in these States, as well, the sentencing authority is fully aware of the precise parole status of life-sentenced murderers. Ariz. Rev. Stat. Ann. §13–703(B) (Supp. 1993); Idaho Code §19–2515(d) (1987); Mont. Code Ann. § 46–18–301 (1993); Neb. Rev. Stat. §29–2520 (1989).

[8]Only two States other than South Carolina have a

be told about sentencing. In a State in which parole is available, how the jury's knowledge of parole availability will affect the decision whether or not to impose the death penalty is speculative, and we shall not lightly second-guess a decision whether or not to inform a jury of information regarding parole. States reasonably may conclude that truthful information regarding the availability of commutation, pardon, and the like, should be kept from the jury in order to provide "greater protection in [the States'] criminal justice system than the Federal Constitution requires." *Id*., at 1014. Concomitantly, nothing in the Constitution prohibits the prosecution from arguing any truthful information relating to parole or other forms of early release.

But if the State rests its case for imposing the death

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life-without-parole sentencing alternative to capital punishment for some or all convicted murderers but refuse to inform sentencing juries of this fact. See *Commonwealth* v. *Henry*, 524 Pa. 135, 160, 569 A. 2d 929, 941 (1990), cert. denied, 499 U. S. 931 (1991); *Commonwealth* v. *Strong*, 522 Pa. 445, 458–460, 563 A. 2d 479, 485–486 (1989); *Eaton* v. *Commonwealth*, 240 Va. 236, 248–249, 397 S.E. 2d 385, 392–393 (1990), cert. denied, __ U. S. __ (1991); *O'Dell* v. *Commonwealth*, 234 Va. 672, 701, 364 S.E. 2d 491, 507, cert. denied, 488 U. S. 871 (1988).

JUSTICE SCALIA points out that two additional States, Texas and North Carolina, traditionally have kept information about a capital defendant's parole ineligibility from the sentencing jury. See *post*, at 2. Neither of these States, however, has a life-without-parole sentencing alternative to capital punishment. It is also worthy of note that, pursuant to recently enacted legislation, North Carolina now requires trial courts to instruct capital-sentencing juries concerning parole eligibility. See 1993 N.C. Sess. Laws, ch. 538, §29.

penalty at least in part on the premise that the defendant will be dangerous in the future, the fact that the alternative sentence to death is life without parole will necessarily undercut the State's argument regarding the threat the defendant poses to society. Because truthful information of parole ineligibility allows the defendant to "deny or explain" the showing of future dangerousness, due process plainly requires that he be allowed to bring it to the jury's attention by way of argument by defense counsel or an instruction from the court. See *Gardner*, 430 U. S., at 362.

There remains to be considered whether the South Carolina Supreme Court was correct in concluding that the trial court "satisfie[d] in substance [petitioner's] request for a charge on parole ineligibility," 427 S.E. 2d, at 179, when it responded to the jury's query by stating that life imprisonment was to be understood in its "plain and ordinary meaning." *Ibid.* In the court's view, petitioner basically received the parole-ineligibility instruction he requested. We disagree.

It can hardly be questioned that most juries lack accurate information about the precise meaning of "life imprisonment" as defined by the States. For much of our country's history, parole was a mainstay of state and federal sentencing regimes, and every term (whether a term of life or a term of years) in practice was understood to be shorter than the stated term. See generally Lowenthal, Mandatory Sentencing Laws: Undermining the Effectiveness of Determinate Sentencing Reform, 81 Calif. L. Rev. 61 (1993) (describing the development of mandatory sentencing laws). Increasingly, legislatures have enacted mandatory sentencing laws with severe penalty provisions, yet the precise contours of these penal laws vary from State to State. See Cheatwood,

The Life-Without-Parole Sanction: Its Current Status and a Research Agenda, 34 Crime & Delinq. 43, 45, 48 (1988). Justice Chandler of the South Carolina Supreme Court observed that it is impossible to ignore "the reality, known to the `reasonable juror,' that, historically, life-term defendants have been eligible for parole." *State* v. *Smith*, 298 S.C. 482, 489–490, 381 S.E. 2d 724, 728 (1989) (opinion concurring and dissenting), cert. denied, 494 U. S. 1060 (1990).[9]

An instruction directing juries that life imprisonment should be understood in its "plain and ordinary" meaning does nothing to dispel the misunderstanding reasonable jurors may have about the way in which any particular State defines "life imprisonment."[10] See *Boyde* v. *California*, 494 U. S. 370, 380 (1990) (where there is a "reasonable likelihood that the jury

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[9]Public opinion and juror surveys support the commonsense understanding that there is a reasonable likelihood of juror confusion about the meaning of the term "life imprisonment." See Paduano & Smith, Deadly Errors: Juror Misperceptions Concerning Parole in the Imposition of the Death Penalty, 18 Colum. Human Rights L. Rev. 211, 222–225 (1987); Note, The Meaning of "Life" for Virginia Jurors and Its Effect on Reliability in Capital Sentencing, 75 Va. L. Rev. 1605, 1624 (1989); Eisenberg & Wells, Deadly Confusion: Juror Instructions in Capital Cases, 79 Cornell L. Rev. 1 (1993); Bowers, Capital Punishment & Contemporary Values: People's Misgivings and the Court's Misperceptions, 27 Law & Society 157, 169–170 (1993).

[10]It almost goes without saying that if the jury in this case understood that the "plain meaning" of "life imprisonment" was life without parole in South Carolina, there would have been no reason for the jury to inquire about petitioner's parole eligibility.

has applied the challenged instruction in a way that prevents the consideration of constitutionally relevant evidence," the defendant is denied due process).

It is true, as the State points out, that the trial court admonished the jury that "you are instructed not to consider parole" and that parole "is not a proper issue for your consideration." App. 146. Far from ensuring that the jury was not misled, however, this instruction actually suggested that parole *was* available but that the jury, for some unstated reason, should be blind to this fact. Undoubtedly, the instruction was confusing and frustrating to the jury, given the arguments by both the prosecution and the defense relating to petitioner's future dangerousness, and the obvious relevance of petitioner's parole ineligibility to the jury's formidable sentencing task. While juries ordinarily are presumed to follow the court's instructions, see *Greer* v. *Miller*, 483 U. S. 756, 766, n. 7 (1987), we have recognized that in some circumstances "the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored." *Bruton* v. *United States*, 391 U. S. 123, 135 (1968). See also *Beck* v. *Alabama*, 447 U. S. 625, 642 (1980); *Barclay* v. *Florida*, 463 U. S., at 950 ("Any sentencing decision calls for the exercise of judgment. It is neither possible nor desirable for a person to whom the State entrusts an important judgment to decide in a vacuum, as if he had no experiences").

But even if the trial court's instruction successfully prevented the jury from considering parole, petitioner's due process rights still were not honored. Because petitioner's future dangerousness was at issue, he was entitled to inform the jury of his parole ineligibility. An instruction directing the jury not to consider the defendant's likely conduct in prison would not have satisfied due process in *Skipper*,

supra, and, for the same reasons, the instruction issued by the trial court in this case does not satisfy due process.

The State may not create a false dilemma by advancing generalized arguments regarding the defendant's future dangerousness while, at the same time, preventing the jury from learning that the defendant never will be released on parole. The judgment of the South Carolina Supreme Court accordingly is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.