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# SUPREME COURT OF THE UNITED STATES

Syllabus

## SIMMONS v. SOUTH CAROLINA

CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA  
No. 92-9059. Argued January 18, 1994—Decided June 17, 1994

During the penalty phase of petitioner's South Carolina trial, the State argued that his future dangerousness was a factor for the jury to consider when deciding whether to sentence him to death or life imprisonment for the murder of an elderly woman. In rebuttal, petitioner presented evidence that his future dangerousness was limited to elderly women and thus there was no reason to expect violent acts from him in prison. However, the court refused to give the jury his proposed instruction that under state law he was ineligible for parole. When asked by the jury whether life imprisonment carried with it the possibility of parole, the court instructed the jury not to consider parole in reaching its verdict and that the terms life imprisonment and death sentence were to be understood to have their plain and ordinary meaning. The jury returned a death sentence. On appeal, the State Supreme Court concluded that regardless of whether a trial court's refusal to inform a sentencing jury about a defendant's parole ineligibility might ever be error, the instruction given to petitioner's jury satisfied in substance his request for a charge on such ineligibility.

*Held*: The judgment is reversed, and the case is remanded.

\_\_\_ S. C. \_\_\_, 427 S. E. 2d 175, reversed and remanded.

JUSTICE BLACKMUN, joined by JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE GINSBURG, concluded:

1. Where a defendant's future dangerousness is at issue, and state law prohibits his release on parole, due process requires that the sentencing jury be informed that the defendant is parole ineligible. An individual cannot be executed on the basis of information which he had no opportunity to deny or explain. *Gardner v. Florida*, 430 U. S. 349, 362. Petitioner's jury reasonably may have believed that he could be released on parole if

he were not executed. To the extent that this misunderstanding pervaded its deliberations, it had the effect of creating a false choice between sentencing him to death and sentencing him to a limited period of incarceration. The trial court's refusal to apprise the jury of information so crucial to its determination, particularly when the State alluded to the defendant's future dangerousness in its argument, cannot be reconciled with this Court's well-established precedents interpreting the Due Process Clause. See, e.g., *Skipper v. South Carolina*, 476 U. S. 1. Pp. 7–15.

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2. The trial court's instruction that life imprisonment was to be understood in its plain and ordinary meaning did not satisfy petitioner's request for a parole ineligibility charge, since it did nothing to dispel the misunderstanding reasonable jurors may have about the way in which any particular State defines "life imprisonment." Pp. 15-17.

JUSTICE O'CONNOR, joined by THE CHIEF JUSTICE and JUSTICE KENNEDY, concluded that where the State puts a defendant's future dangerousness in issue, and the only available alternative sentence to death is life imprisonment without possibility of parole, due process entitles the defendant to inform the sentencing jury—either by argument or instruction—that he is parole ineligible. If the prosecution does not argue future dangerousness, a State may appropriately decide that parole is not a proper issue for the jury's consideration even if the only alternative sentence to death is life imprisonment without the possibility of parole. Here, the trial court's instruction did not satisfy petitioner's request for a parole ineligibility charge, since the rejection of parole is a recent development displacing the longstanding practice of parole availability, and since common sense dictates that many jurors might not know whether a life sentence carries with it the possibility of parole. Pp. 1-4.

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