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HARRIS v. ALABAMA 115 S. Ct. 1031 (1995) United States Supreme Court

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FACTS

On May 6, 1988, a Montgomery County, Alabama grand jury indicted Louise Harris, charging her with two counts of capital murder in the shooting death of her husband, Deputy Sheriff Isaiah Harris.[1] Mrs. Harris had asked her lover, Lorenzo McCarter, to find someone to kill her husband. McCarter had found two willing accomplices, Michael Sockwell and Alex Hood, who were paid one hundred dollars with a promise of more money upon completion of the killing.

On July 13, 1989, a jury convicted Harris of capital murder for pecuniary gain or pursuant to a contract for hire. At the sentencing hearing,[2] a number of witnesses attested to Harris' good background and strong character.[3] The jury recommended by a seven to five vote that Harris be imprisoned for life without parole.[4] The trial judge then considered Harris' sentence[5] and found the existence of one aggravating circumstance, that the murder was committed for pecuniary gain. The trial judge also found one statutory mitigator: that Harris had no prior criminal record. The trial judge also found as a nonstatutory mitigator that Harris was a hardworking and respected member of her church and community.

Recognizing that Harris had planned the crime, financed its commission, and stood to benefit the most from her husband's murder,[6] the trial judge concluded that the one statutory aggravating circumstance far outweighed all of the non-statutory mitigating circumstances, and imposed a sentence of death.[7]

The Alabama Court of Criminal Appeals affirmed Harris' conviction and sentence.[8] It stated that Alabama's death penalty statute is based on Florida's sentencing scheme, which the United States Supreme Court found to be constitutionally acceptable in *Spaziano v. Florida*[9] and *Proffitt v. Florida*.[10] The most basic difference between the two schemes is that jury recommendations are to be given "great weight" by the sentencing judge in Florida,[11] whereas Alabama only requires the judge to "consider" the advisory verdict. The Court of Criminal Appeals rejected Harris' contention that Florida's standard is constitutionally required.[12]

As required by statute,[13] the court then reviewed the record for prejudicial errors and independently weighed the aggravating and mitigating circumstances. Finding no errors and concluding that death was the proper sentence, the court affirmed the trial court's decision.[14] The Alabama Supreme Court affirmed, discussing an unrelated claim.[15] The United States Supreme Court granted certiorari[16] to decide whether Alabama's capital sentencing statute is unconstitutional because it does not specify the weight the judge must give to the jury's recommendation and thus permits the arbitrary imposition of the death penalty.

HOLDING

In a seven to one decision, the United States Supreme Court affirmed the judgment of the Alabama Supreme Court, holding that the Constitution permits the trial judge, acting alone, to impose a capital

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[1] Harris was originally charged with two counts of murder in the single killing, one for murder pursuant to a contract for hire or pecuniary gain, Ala. Code § 13A-5-40(a)(7) (1994), and another for the murder of a law enforcement officer, Ala. Code § 13A-5-40(a)(5) (1994). The second count was dismissed, however, because the state failed to prove Mr. Harris had been on duty at the time of the shooting.

[2] A defendant convicted of capital murder in Alabama is entitled to a sentencing hearing before the trial jury, Ala. Code § 13A-5-46 (1994), unless jury participation is waived by both parties and approved by the court, § 13A-5-44 (c).

[3] Ala. Code § 13A-5-45 (e) requires that the state prove statutory aggravating factors beyond a reasonable doubt and subsection (g) requires the state to disprove, by a preponderance of the evidence, any mitigating circumstances the defendant may offer.

[4] In rendering an advisory verdict, the jury must recommend death if it finds that aggravating circumstances outweigh mitigating circumstances. Otherwise, the verdict is life imprisonment without parole. Ala. Code § 13A-5-46 (e)(3) (1994). The jury may recommend death only if ten jurors so agree, while a verdict of life imprisonment requires a simple majority. Ala. Code § 13A-5-46(f). The recommendation and vote tally are reported to the judge.

[5] In order to impose a sentence, the judge must consider all available evidence and file a written statement detailing the defendant's crime, listing specific aggravating and mitigating factors. Alabama Code § 13A-5-47(e) provides:

> In deciding upon the sentence, the trial court shall determine whether the aggravating circumstances it finds to exist outweigh the mitigating circumstances it finds to exist, and in doing so the trial court shall consider the recommendation of the jury contained in its advisory verdict, unless such a verdict has been waived pursuant to Section 13A-5-46(a) or 13A-5-46(g). While the jury's recommendation concerning sentence shall be given consideration, it is not binding upon the court.

[6] Harris would have shared about $250,000 in death benefits with her co-conspirators.

[7] In separate proceedings, all the conspirators were convicted of capital murder. McCarter and Hood received prison terms of life without parole. Sockwell, the triggerman, was sentenced to death after the trial judge rejected a jury recommendation of seven to five for life imprisonment.

[8] 632 So.2d 503 (Ala. 1992).

[9] 468 U.S. 447, 457-67 (1984) (no constitutional right to be sentenced by jury).

[10] 428 U.S. 242, 252 (1976) (Florida statute, including provision allowing override of life recommendation, is constitutional.).

[11] *See Tedder v. State*, 322 So.2d 908, 910 (Fla. 1975).

[12] *Harris*, 632 So.2d at 538.

[13] According to Alabama Code § 13A-5-53(b), if a defendant is sentenced to death in Alabama, his conviction and sentence are automatically reviewed by an appellate court and, if affirmed, a writ of certiorari is granted by the Alabama Supreme Court as a matter of right. In addition to reviewing the record for errors, the appellate courts must independently weigh aggravating and mitigating circumstances and determine whether the death sentence is disproportionate to sentences rendered in comparable cases.

[14] 632 So.2d at 542-43.

[15] 632 So.2d 543 (1993).

[16] 114 S. Ct. 2736 (1994).

sentence, and the Eighth Amendment does not require states to define the weight the sentencing judge must give to an advisory jury verdict.[17] Justice O'Connor delivered the opinion of the Court.

ANALYSIS/APPLICATION IN VIRGINIA

Both the Eighth and Fourteenth Amendments prohibit death sentences that rest on the basis of arbitrary procedures. In *Gardner v. Florida*,[18] the Court stated that "[i]t is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice...." Later, in *Godfrey v. Georgia*[19] it was held that states have a constitutional responsibility to tailor and apply the law in a manner that avoids the arbitrary and capricious infliction of the death penalty.

In addressing Harris' Eighth Amendment claim, the Court began by highlighting the similarities and differences between Alabama's capital sentencing scheme and Florida's.[20] The most important difference between the two schemes is that Florida requires that the trial judge give "**great weight**" to the jury's recommendation and may not override the advisory verdict of life unless "the facts suggesting a sentence of death [are] so clear and convincing that virtually no reasonable person could differ."[21] The Alabama capital sentencing statute, in contrast, requires only that the trial judge "**consider**" the jury's recommendation, and Alabama courts have steadfastly refused to read the Florida standard into the statute.[22]

Concluding that the Eighth Amendment does not require the sentencing judge to ascribe any particular weight to the verdict of an advisory jury, the Court relied heavily on *Spaziano v. Florida*,[23] where it upheld the constitutionality of Florida's capital sentencing statute. In *Spaziano* the Court addressed the issue of whether Florida could vest sentencing authority in the judge and relegate the jury to an advisory role. In rejecting the contention that placing sentencing responsibility on a trial judge in a capital case violates contemporary standards of fairness and decency, the Court held that the "Eighth Amendment is not violated every time a State reaches a conclusion different from a majority of its sisters over how best to administer its criminal laws."[24] In making this determination, the "hallmark of the analysis" is not the particular weight a state chooses to place upon the jury's advice, but whether the scheme adequately channels the sentencer's discretion so as to prevent arbitrary results.[25]

Based on *Franklin v. Lynaugh*,[26] the Court rejected Harris' contention that the trial judge must give "great weight" to the jury's advice. In *Franklin* the Court had rejected the argument that specific methods for balancing mitigating and aggravating factors in a capital sentencing proceeding were constitutionally required.[27] Similarly, the Constitution does not require a state to ascribe any specific weight to aggravating or mitigating standards.[28] Therefore, to require that "great weight" be given to jury recommendations in Alabama would "offend these established principles and place within constitutional ambit micromanagement tasks that properly rest within the State's discretion to administer its criminal justice system."[29]

In support of the "great weight" standard, Harris argued alternatively that, under Alabama law, the jury verdict is more than advisory and that the jury in fact enjoys the key sentencing role, subject only to review by the judge. Harris cited numerous cases where death sentences were reversed due to prejudicial errors committed before the advisory jury. From these cases she reasoned that unless the jury played a key role in sentencing, reversal would not have been required because the sentencing judge was not exposed to the same harmful error.

The Court rejected this argument, stating that "reversal is proper so long as the jury recommendation played a role in the judge's decision, not necessarily a determinative one."[30] This is so because if the judge must consider the jury verdict in sentencing a capital defendant, then it follows that a sentence is invalid if the recommendation upon which it is partially based was rendered erroneously.[31] Such consequential error attaches whenever the jury recommendation is considered in the process, not only when it is given great weight by the judge.

According to the Alabama Prison Project, there have been only five cases in which the judge rejected an advisory jury verdict of death, whereas there have been forty-seven instances where the judge imposed a death sentence over a jury recommendation of life.[32] Harris used this disparity to argue that Alabama trial courts, in imposing death sentences, use erratic methods and apply whimsical standards in assessing the function of the jury's advisory verdict.

The Court did not find the numbers convincing, stating that they afforded at best an incomplete picture of capital sentencing in Alabama. She reasoned that even if the statistics did supply an accurate portrayal of capital sentencing, constitutional questions involve more than mere numerical tabulation. The true test is whether the penalties imposed are the product of properly guided discretion and not arbitrary whim.

Harris' last argument focused on disparities in the weight given to jury verdicts in different cases in Alabama. For example, the trial judge in Harris' case did not specify his reason for rejecting the jury's sentence of life without parole, but in another case he wrote that he accorded "great weight" to the jury's recommendation.[33] Harris pointed to other cases with similar disparities and argued that the Alabama statute, in permit-

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17 115 S. Ct. 1036-37 (1995).

18 430 U.S. 349, 358 (1977).

19 446 U.S. 420, 428 (1980).

20 Both states require jury participation in the sentencing process but give ultimate sentencing authority to the trial judge. Ala. Code § 13A-5-47(e) (1994); Fla. Stat. § 921.141(3) (1985). A sentence of death in both states is subject to automatic appellate review. Ala. Code § 13A-5-55 (1994); Fla Stat. § 921.141(4) (1985). Finally, in Florida and Alabama the reviewing courts must independently weigh aggravating and mitigating circumstances to determine the propriety of the death sentence, Ala. Code § 13A-5-53(b)(2) (1994); *Harvard v. State*, 375 So.2d 833 (Fla. 1977), and must decide whether the penalty is excessive or disproportionate compared to similar cases. Ala. Code § 13A-5-53(b)(3) (1994); *Williams v. State*, 437 So.2d 133 (Fla. 1983).

21 115 S. Ct. at 1034 (quoting *Tedder v. State*, 322 So.2d at 910). The same standard applies to a jury recommendation of death. *See Grossman v. State*, 525 So.2d 833, 899 n.1 (Fla. 1988).

22 *See Ex Parte Jones*, 456 So.2d 380, 382-83 (Ala. 1984).

23 468 U.S. 447 (1984).

24 *Id.* at 464-65.

25 115 S. Ct. at 1035.

26 487 U.S. 164 (1988).

27 *Id.* at 179.

28 *See Blystone v. Pennsylvania*, 494 U.S. 299, 306-07 (1990); *Eddings v. Oklahoma*, 455 U.S. 104, 113-15 (1982).

29 115 S. Ct. at 1036.

30 *Id.*

31 *See Espinosa v. Florida*, 112 S. Ct. 2926 (1992), where the Court reversed a death sentence when an advisory jury, but not the sentencing judge, was presented with an invalid aggravating factor.

32 115 S. Ct. at 1036.

33 115 S. Ct. at 1036-37, citing *State v. Coral*, No. CC-88-741 (Montgomery Cty., June 26, 1992).

ting judges to arbitrarily reject advisory jury verdicts, is an abuse of sentencing discretion.

The Court rejected this argument, reasoning that the cited statements do not indicate that the judges have divergent understandings of the statutory requirement. Rather, they illustrate how different judges have "considered" the jury's advice. It would be unreasonable to expect that advisory verdicts would be treated uniformly in every case.[34]

The result in *Harris* is not surprising, given the Court's holding in *Spaziano* that states could, consistent with the Eighth Amendment, vest sentencing authority in the judge and relegate the jury to an advisory role.[35] However, Justice O'Connor's statement that constitutional questions involve more than mere numerical tabulation is questionable. She has previously counted legislatures in determining the reach of the Eighth Amendment,[36] purportedly following the established doctrine that the Eighth Amendment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society,"[37] and that both legislatures and **juries** are primary indicators of these standards.[38]

The Court's decision in *Harris* has no direct application to Virginia practice, as a jury sentence of life imprisonment is not reviewable in Virginia.[39] However, after consideration of a post-sentence report and upon good cause shown,[40] a judge may set aside a jury's sentence of death and impose a sentence of life imprisonment.[41]

While Virginia courts rarely override jury death sentences, the post-sentencing hearing provides an opportunity for counsel to ensure that the record is adequate to preserve appellate issues. It also allows counsel to make and preserve new claims, one being that the Sixth Amendment confrontation clause is violated by the sentencing court's consideration of hearsay evidence contained in the post-sentence report.[42]

Summary and analysis by:
John M. DelPrete

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[34] 115 S. Ct. at 1037.

[35] *Spaziano*, 468 U.S. at 464-65.

[36] *See Thompson v. Oklahoma*, 487 U.S. 815, 849 (1988) ("[A]lmost two-thirds of the state legislatures have definitely concluded that no 15-year-old should be exposed to the threat of execution.") (O'Connor, J., concurring) and *Penry v. Lynaugh*, 492 U.S. 302, 331 (1989) ("The clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures. We have also looked to data concerning the actions of sentencing juries.").

[37] *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

[38] *See Woodson v. North Carolina*, 428 U.S. 280, 293 (1976) (jury determinations and legislative enactments are two crucial indicators of evolving standards of decency) and *Gregg v. Georgia*, 428 U.S. 153, 179-181 (1976) ("The legislatures of at least 35 States have enacted new statutes that provide for the death penalty . . . . The jury also is a significant and reliable objective index of contemporary values . . . ."). This pivotal role of juries was simply not discussed in *Harris*.

[39] Va. Code Ann. § 19.2-264.4 (A) (1990) ("In cases of trial by jury, where a sentence of death is not recommended, the defendant shall be sentenced to imprisonment for life.").

[40] "Good cause shown" reiterates the rule applicable in all cases when the court must consider altering a jury verdict. *See Bassett v. Commonwealth*, 222 Va. 844, 284 S.E.2d 844 (1981).

[41] Va. Code Ann. § 19.2-264.5 (1990).

[42] Hearsay evidence contained in the post-sentence report can be considered by the court at the sentencing phase. *See O'Dell v. Commonwealth*, 234 Va. 672, 364 S.E.2d 491 (1988).

STOCKTON v. MURRAY

41 F.3d 920 (4th Cir. 1994)
United States Court of Appeals, Fourth Circuit

FACTS

In 1983, Dennis Stockton was convicted, as a hiree, of the capital murder of Kenneth Ardner and sentenced to death under the murder for hire provision of Virginia's capital murder statute.[1] Under this section, one is not guilty of capital murder unless the hiring element is proved. The only witness who testified to the hiring agreement was Randy Bowman, an inmate at a North Carolina prison at the time of trial.[2] Bowman testified that he had not received any promises for testifying, but that it was the right thing to do and that he hoped to benefit from it.[3]

Stockton pursued appeals and collateral proceedings, was awarded a resentencing hearing which resulted in another death sentence, and continued to seek appellate relief.[4]

The issues decided by the Fourth Circuit panel and included in Stockton's fourth state habeas corpus petition involve claimed violations of *Brady v. Maryland*[5] and its progeny. Specifically, Stockton alleged that (1) he was unaware, until defense counsel received a letter from the Commonwealth's attorney in 1990, that the prosecutor had promised Bowman that he (the prosecutor) would endeavor to get Bowman transferred to another prison; and (2) that the prosecutor failed to turn over a 1983 letter from Bowman in which Bowman threatened the prosecutor that he would not testify unless the sentence he was serving was reduced.[6]

The Virginia courts found these claims to be procedurally barred and the federal district court concurred in this finding. Stockton appealed to the Fourth Circuit.

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[1] Va. Code Ann. § 18.2-31(b) (1990).

[2] A full description of the underlying facts can be found in *Stockton v. Commonwealth*, 852 F.2d 740 (4th Cir. 1988), *cert. denied sub nom.*

[3] *Stockton v. Murray*, 41 F.3d 920, 922 (4th Cir. 1994).

[4] *Id.* at 923.

[5] 373 U.S. 83 (1963) (holding that due process is violated when material and exculpatory evidence is withheld from defendant).

[6] *Stockton*, 41 F.3d at 923. Another claim involved an allegation that the prosecution withheld evidence that a second witness at Stockton's trial, who alleged that Stockton had committed a second murder, had mentioned an additional motive Stockton allegedly harbored for killing Ardner. The claim was relatively unimportant compared to Stockton's two other *Brady* claims, and the court's rejection of the claim was probably correct. It will not be discussed further in this summary.