




10-1981

Eddings v. Oklahoma

Lewis F. Powell Jr.

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Baker (Petr)

Narrow issue: validity of death sentence for a 16 yr old.

Must be an age below which death would

Trial judge held he could not consider the background of the 16 yr old under Okla law.

Responding to O'Connor, Baker agreed we could ~~now~~ revisit on Lockett to consider all mitigating circumstances - & thus not reach the ~~age~~ age Q.

Cited Godfrey - no difference here.

O'Connor noted that any age cut-off fails to take ac of varying times of maturity. (See my opinion Fare v Michael)

Q#2
in Petr.

} See p 207 of Appendix for holding of S/CT Okla - "age" only mitigating circumstances

Lee (Ant AG of Okla)

Agree would be cruel to execute
10 year.

Only mitigation factor is age.

If A were an adult, none of the
other facts would be mitigated.

Agree that "maturity" may vary.
x x x

Eddings was in 10th grade ~~but~~
appeared to be older.

x x x

There are state ~~post~~ post
conviction remedies.

Lockett was decided before decision
of Okla Ct/Apps but after the trial.

Edwards

80-5727

I was immediately asked
Other. Counts and in
not continuous ones
multiples for both other
than age. A 189 (first count)
A 207 (1st/2nd)

"First 18 found only
one - Do you?" (A 207)

Other factors mentioned by
1st/2nd - but ignored:

1. family history
"Grand & father before me"
2. "personality disorder"
3. Circumstances of death
Running away -
car full of children
Rising aggressive
father

Ind. Youth Commission Act
Programs distributed
but getting up to 22, &
some mature resources

Proposed Ind. Capital
Programs & Budget (5/1/4)
- youth (under 18) multipliers only

Middle Range Cost - under 18
- under 18 multiplier under 18

State Land: 8 of 94 included
under 18

Young adults: 6.9 under 20 - under 18
1.9 under 18

Juvenile Tipland

(1976 Report of the
Under 18 offenders)

1/3 of all felony arrests

10% of household arrests

19,490 cases

From 1960 - 1974:

243% increase

as violent crimes by youth
increased

Chronic offenders

80-5727 Eddings v Okla
(Prine Conference notes)

10/31 file

Voted to grant thinking age line somewhere must be required by 8th Amend.

But I doubt we could, on basis of our cases, say line should be under 17 or 18.

Gregg. Look to "contemporary" views for the "evolving standards" as to what is "cruel & unusual".

1. History - Juveniles ^(down to 14) ~~for~~ were routine executed for many years.

2. Legislature - 34 states have capital punishment. Only 8 prohibit execution of under 18

3. Jury verdicts - As of ^{May 1, 1981,} ~~May 1, 1981~~ 63 on death row under 20. And 17 of these under 18.

4. Common law - presumed incapable of criminal intent - under 14.

5. High % of all crime - juveniles.

Views to contrary. Model Penal Code, scholarly writings, European Countries

This case: Reverse & Remand. Okla Courts did not consider but one mitigating factor: age.

Other factors included

(1) family background; (2) emotional instability; circumstances of crime (running away from broken home)

Only one aggravating factor: police officer

8 of 34

Pending
Fed Act

The Chief Justice Affirm

On grounds relied upon by Okla courts
need not draw any line.
Relevant facts were considered
Lockett factors not raised.

Justice Brennan Reverse & VacateJustice White Affirm

Can't say no 16 yr. old should be
executed

App. on record.

Not sure Lockett issue is here

Justice Marshall

Rev. - Vacate

Justice Blackmun

Apparition

That court did consider all
relevant factors - tho judge denied it.

Can't draw line at 16.00.

hookett issue not raised.

Justice Powell

Revere x Remand

See my notes

Justice Rehnquist *Agrees*

~~to~~

Justice Stevens *Rev. & Remand*

Plain violation of Lockett - as
a Court. matter.

Agrees with L.F.P. that ~~to~~ there was
Court. error.

Only Q is whether issue is here
& also agrees with me that we can
reach it.

8th Amend gives judges a special responsibility

Justice O'Connor *Rev & Remand*

Lockett require consideration
of all mitigating circumstances.

There are other cases in which this
Court has considered all mitigating
circumstances.

Would not draw line - at least
in this case

There is a line
"But there - some
where?" Would be
willing - if we had
40 - to draw line at
18.

4 November

File

To: Justice Powell
From: David
Re: Eddings, No. 80-5727

I am still waiting for the record in this case. I doubt that it will help very much in arguing that the Lockett point was argued below, in substance, although not by name. *

I have enclosed xeroxes of the relevant portions of the opinions by the county court and the court of criminal appeals. I think you are going to run into the following arguments at conference:

1. It may be argued that although the trial court did not, the appeal court did consider the full range of mitigating circumstances. It found that Eddings' emotional disturbance and family background did not "excuse" what he did. If one believes that the appeal court did consider the full range of mitigating circumstances then one would either be inclined not to remand on Lockett at all or one might argue that the matter should be remanded to the sentencing judge for him to consider the full range of mitigating circumstances. This second approach raises the question you and I discussed earlier in the term as to whether review by a state appeal court can cure error by the sentencer. The Court's current position is that such review does cure error, and I don't think that the Court can remand to the trial court without changing this position.

* I have reviewed record. The Lockett point was raised in the petition for rehearing before the court of criminal appeals

2. More plausible to me, is that the state appeal court did not consider the full range of mitigating circumstances. When you read the full paragraph, it appears that the appellate court confused legal excuses from culpability with circumstances mitigating the sentence. The court emphasizes that Eddings knew right from wrong and that "explanations" were not "excuses." At least if the paragraph may be read this way--if there is ambiguity--a remand would be appropriate.

3. There will be some question as to whether the Court can consider the Lockett point when the question was not argued to the courts below and was not even argued in the cert petition. It appears that in Vachon v. New Hampshire, 414 U.S. 478 (1974), the Court did consider a plain error that had not been argued in the court below nor in the jurisdictional statement.

Perhaps it can be argued that although Lockett was not specifically argued to the lower courts, the question of what range of mitigating circumstances must be considered was very much on the minds of both the trial court and the court of criminal appeals. Both courts appeared to rule that personality disorders and family background do not qualify as mitigating circumstances. In this sense, although Lockett was not argued by name, the courts have issued judgments on the question of whether family background and emotional disorders must be considered mitigating circumstances. I think it fair for the Court to consider the same question.

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other. Or at least to be returned to the person who was at that time charged with his supervision. And there isn't any doubt in the Court's mind but that beyond a reasonable doubt the crime was committed at that particular time to avoid prosecution.

88] Insofar as a lawful arrest is concerned, of course the Court feels that there was sufficient evidence to show that for reason of the lights being on on the patrol car, and the actual stopping of the vehicle, that Trooper Crabtree's intent was to make a lawful arrest. So that disposes of those two points on aggravation.

Insofar as the third count, the Court specifically finds that two separate and independent acts or statements were made to Officers after the killing. And in this regard, the Court finds that these were spontaneous utterances, perhaps made by a youthful offender, but yet they were made. And the Court doesn't know, of course, why the crime was committed in the first place, but I do find beyond a reasonable doubt from the utterances to these Officers that there is a very strong likelihood that if the Defendant were released that he would again commit a criminal act of violence that would constitute a continuing threat to society. So for those reasons, the Court finds that that particular aggravation has been proved to the satisfaction of the Court beyond reasonable doubt.

Now under the law that we have, the Court must at this time consider the mitigation; and if the Court finds that there is sufficient mitigation; under the law, the Court is statutorily bound to impose a sentence of life instead of the death penalty.

289] In this particular regard, the Court has attempted to ascertain what is meant by mitigation. Some examples of mitigation that I have found, are to render less painful, to lessen, to abate, to moderate, or to soften. And I think there is some statutory authority in the State that the age of a Defendant can be considered.

And I want Mr. Baker, and Mr. Eddings to know, and all concerned persons to know, in this particular case I have

Eddings County Court 80-5727

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given very serious consideration to the youth of the Defendant when this particular crime was committed. Should I fail to do this, I think I would not be carrying out my duty. On the other hand, the Court cannot be persuaded entirely by the youthfulness of the fact that the youth was sixteen years old when this heinous crime was committed. Nor can the Court in following the law, in my opinion, consider the fact of this young man's violent background. I am very cognizant of the fact that he pleads to this Court for mercy instead of murder—or to be killed himself. Under the law, I do not find that the youthful in this particular case offsets the condition of mitigation—or in any way softens the act that was committed.

So not finding any mitigation other than the youthfulness, and failing to find that it has sufficiently softened the aggravating circumstances that the Court has found beyond a reasonable doubt, the Court has no alternative [290] in this particular case other than to sentence Monty Lee Eddings to death. And this will be the judgment and finding of this Court.

And Mr. Eddings, if you will come up with your attorney, I will indicate to you what time this execution will be carried out.

Mr. Eddings, in carrying out the finding by this Court, as I understand the law to be, the sentencing shall be carried out no less than sixty or more than ninety days from the execution date that has been found by the Court. And in this particular case, the Court will order execution carried out on you for this merciless killing of Trooper Crabtree sixty days from today's date, which would be—this is the 17th of May, I will make it a few days longer than sixty to get beyond any minimum—it would be July the 20th, 1978, at 12:00 noon. This will be carried out under the auspices of the Department of Corrections in the manner required by Oklahoma Statutes, which I understand at this time to be death to be administered by drugs. And the Department of Corrections is ordered to carry out this particular execution absent any stay that I receive, or they receive.

Now at this time, Mr. Eddings, it is the duty of the

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involving crimes against persons as well as against property. In addition, while in custody after the shooting, he made threats against the lives of other highway patrol troopers. Here again, the court's finding was justified by the facts presented to it.

D

We come now to the question of mitigating factors. At the sentencing hearing, the petitioner presented four witnesses: A social worker from Missouri and, as noted above, three expert witnesses. The social worker testified extensively concerning the petitioner's past and his family situation. The State psychologist testified that the petitioner was admitted to Eastern State Hospital for observation and examination during the certification proceedings. The other two witnesses—the psychiatrist in private practice and the sociologist on the faculty at Oral Roberts University—interviewed the petitioner before the certification proceedings. Their testimony at the instant sentencing hearing was substantially the same as that given at the certification hearing.

On the basis of the tests he had administered to the petitioner and his conversations with the youth, the State psychologist diagnosed the petitioner as a sociopathic or anti-social personality. At the certification hearing, the doctor said that two states—California and Maryland—had programs for treating sociopathic personalities, but that there was no way to be certain whether the treatment had an effect or whether people just grew out of their sociopathy. He admitted that some people—perhaps 30%—do seem to grow out of it as they get older, but he said at the sentencing hearing that this was limited principally to concertist type persons rather than violently aggressive persons. (And he referred to a specific study in which nine out of 255 anti-social subjects were considered to have been successfully treated.) The doctor also stated that he found no indications of defective reasoning ability or mental illness.

The sociologist from Oral Roberts University had exten-

sive experience in the field of criminal law. He also diagnosed the petitioner as an anti-social personality, and he talked about the factors in the petitioner's life which had led to this development. He believed that the petitioner could be helped with therapy to work through his problems and take a useful place in society, given a sufficient length of time.

The diagnosis of an anti-social disorder was repeated by the psychiatrist in private practice. This doctor, too, believed the petitioner could be treated, but estimated it would take 15 to 20 years of intensive therapy (although he had said three years at the certification hearing). He believed that at the time the petitioner pulled the trigger he was disassociating: in his opinion the petitioner was not shooting an Oklahoma Highway Patrol Officer, but was killing the specter of his stepfather, who was a policeman in Missouri. Nevertheless, the doctor thought the petitioner knew the difference between right and wrong—the petitioner just did not think the rules applied to him. On the other hand, the doctor did not believe the petitioner would kill again if the opportunity ever arose.

In his closing argument to the District Court and in his brief and argument to this Court, the petitioner's attorney urged several mitigating circumstances. However, the trial court found only one—the petitioner's youth. As stated earlier, the District Court indicated great weight had been given to this factor but, nevertheless, found it could not overbalance the aggravating circumstances of the case. We, too, have given serious consideration to the petitioner's youth. But the aggravating circumstances in this case are very serious; and we, too, have to conclude that the petitioner's youth cannot outweigh them.

The petitioner also argues his mental state at the time of the murder. He stresses his family history in saying he was suffering from severe psychological and emotional disorders, and that the killing was in actuality an inevitable product of the way he was raised. There is no doubt that the petitioner has a personality disorder. But all the evidence tends to show that he knew the difference between

right and wrong at the time he pulled the trigger, and that is the test of criminal responsibility in this State. *Gonzales v. State*, Okl.Cr., 388 P.2d 312 (1964). For the same reason, the petitioner's family history is useful in explaining why he behaved the way he did, but it does not excuse his behavior.

IV

In addition to ruling on the assignments of error that are raised, 21 O.S. Supp. 1978, § 701.13, ¶ C, requires this Court to make three determinations. We have examined the record in this case and have given careful consideration to the arguments of counsel, both written in the briefs and presented at oral argument, and we hold:

1. That the sentence of death was not imposed "under the influence of passion, prejudice, or any other arbitrary factor." Section 701.13, ¶ C, 1. This was a notorious killing. The record indicates that Patrolman Crabtree was a resident of the county and, no doubt, public feeling was high. But the transcripts are completely devoid of the kinds of remarks that reveal bias, and we are sure that the judge in this case gave the petitioner a fair and impartial hearing.
2. That the evidence does support the judge's finding of statutory aggravating circumstances as enumerated in Section 701.12. The basis for this holding should be clear from the body of this opinion.
3. That the sentence of death is not excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. This holding, too, finds ample support in our opinion.

Title 21 O.S. Supp. 1978, § 701.13, ¶ E, provides:

"The court shall include in its decision a reference to those similar cases which it took into consideration. In addition to its authority regarding correction of errors, the court, with regard to review of death sentences, shall be authorized to:

- "1. Affirm the sentence of death; or
- "2. Set the sentence aside and remand the case for modification of the sentence to imprisonment for life."

This conviction wherein the death penalty was assessed places this Court in the same position that confronted the Supreme Court of South Carolina in *State v. Shaw*, 255 S.E.2d 799, 807 (S.C. 1979), wherein that Court stated:

"We have compared the death sentences imposed upon appellants with the sentences imposed in all prior capital cases tried under the current death penalty statutes and are satisfied that there are no similar cases against which the proportionality of the sentences imposed upon appellants can be measured.

"The inability of this Court to compare this case with any other similar cases does not require, however, that appellants' sentences be set aside. Any system of review that requires a comparison of each case with all similar prior cases must have a beginning. There will be a first case for each type or category of capital case that may appear and that first case necessarily cannot be compared to any other similar cases. The first case must stand alone, otherwise comparative sentence review would be forever impossible." (Footnote omitted)

An attempt has been made to compare this case with prior cases that were tried and reviewed under death penalty statutes that are definitionally different from the current statutes. Hence, we find those cases provide no basis for meaningful sentence review.⁴

The current death penalty statutes comply with the guidelines set out in *Gregg*. We have considered and overruled each assignment of error by the petitioner and have completed the statutorily mandated sentence review. We

⁴A list of cases with an attempt to compare is: *Manuel v. State*, Okl.Cr., 560 P.2d 1008 (1977); *Clark v. State*, Okl.Cr., 558 P.2d 674 (1977); *Strange v. State*, Okl.Cr., 462 P.2d 292 (1969); *Fesmire v. State*, Okl.Cr., 456 P.2d 573 (1969); *French v. State*, Okl.Cr., 416 P.2d 171 (1966); *Dare v. State*, Okl.Cr., 378 P.2d 339 (1963); *Doggett v. State*, Okl.Cr., 371 P.2d 523 (1962); *Young v. State*, Okl.Cr., 357 P.2d 562 (1960); *Spence v. State*, Okl.Cr., 353 P.2d 1114 (1960); *Williams v. State*, Okl.Cr., 321 P.2d 990 (1958); *Williams v. Oklahoma*, aff'd 358 U.S. 576, 79 S.Ct. 421, 3 L.Ed.2d 516; rehearing denied, 359 U.S. 956, 79 S.Ct. 737, 3 L.Ed.2d 763 (1959); *Klettke v. State*, 92 Okl.Cr. 366, 223 P.2d 787 (1950).

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE



November 16, 1981

Re: No. 80-5727 - Eddings v. Oklahoma

MEMORANDUM TO THE CONFERENCE:

I will take on a dissent in the above.

Regards,

df1 11/16/81

Reviewed
LFP.

See my
memo

Draft: No. 80-5727, Eddings v. Oklahoma

JUSTICE POWELL delivered the opinion of the Court.

Petitioner Monty Lee Eddings was convicted of first degree murder and sentenced to death. Because this sentence was imposed without "the type of individualized consideration of mitigating factors ... required by the Eighth and Fourteenth Amendments in capital cases," Lockett v. Ohio, 438 U.S. 586, 606 (1978) (Burger, C.J.), we reverse.

I

On April 4, 1977, Eddings, a 16 year old youth, and several younger companions ran away from their Missouri homes. They travelled in a car owned by Eddings' brother, ^{and was on an Oklahoma highway} driving without destination or purpose in a southwesterly direction. ^{Eddings had taken from him} ~~On the floor of the car were~~ ^{in the car a shotgun and} he several rifles Eddings had taken from his father. After Eddings ^{he} momentarily lost control of the car, he was signalled to pull over by Officer Crabtree of the Oklahoma Highway Patrol. Eddings did so, and when the Officer approached the car, Eddings stuck a loaded shotgun out of the window and fired, killing the Officer.

Because Eddings was a juvenile, the State moved to have him certified to stand trial as an adult. Finding that there was prosecutive merit to the complaint and that Eddings was not amenable to rehabilitation within the juvenile system, the trial court granted the motion. The ruling was affirmed on appeal. Matter of M.E., 584 P.2d 1340 (Okla. Cr. 1978), cert denied, 436 U.S. 921 (1978). Eddings was then charged with murder in the first degree,

and the District Court of Creek County found him guilty upon his plea of nolo contendere.

The Oklahoma death penalty statute provides, in pertinent part:

"Upon conviction ... of guilt of a defendant of murder in the first degree, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. ... In the sentencing proceeding, evidence may be presented as to any mitigating circumstances or as to any of the aggravating circumstances enumerated in this act." Okla. Stat. Ann. tit. 21, § 701.10 (emphasis added).

Section 701.12 lists seven separate aggravating circumstances; the statute nowhere defines what is meant by "any mitigating circumstances."

At the sentencing hearing, the State alleged three of the aggravating circumstances enumerated in the statute, ^{that} ~~The State alleged that~~ the murder was especially heinous, atrocious, or cruel, that the crime was committed for the purpose of avoiding or preventing a lawful arrest, and that there was a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society. Okla. Stat. Ann. tit. 21, § 701.12(4), (5), & (7).

In mitigation, Eddings presented ^{substantial} evidence at the hearing of his troubled youth. The testimony of his supervising Juvenile Officer indicated that Eddings had been raised without proper guidance. His parents were divorced when he was five, and until he was fourteen Eddings lived with his mother without any rules or supervision. There is the suggestion that Eddings' mother was an alcoholic and possibly a prostitute. Appx. at 110. By the time Eddings was fourteen he could no longer be controlled, and his mother sent him to live with his father. But neither could the father control the boy. Attempts to reason and talk gave way to physical punishment. The Juvenile Officer testified that Eddings was ^{frightened} ~~scared~~ and bitter, that his father overreacted and used excessive physical punishment: "Mr. Eddings found the only thing that he thought was effectful with the boy was actual punishment, or physical violence--hitting with a strap or something like this." Appx. at 121.

Testimony from other witnesses indicated that Eddings was seriously emotionally disturbed in general and at the time of the crime, and that his mental and

emotional development were at a level several years below his age. Appx. at 173. A State psychologist stated that Eddings had a sociopathic or anti-social personality and that 30% of youths suffering from such a disorder grew out of it as they aged. A sociologist specializing in juvenile offenders testified that Eddings was treatable. A psychiatrist testified that Eddings could be rehabilitated by intensive therapy over a 15 to 20 year period. He testified further that Eddings was disassociating at the time of the murder, and that "he did pull the trigger, he did kill someone, but I don't even think he knew that he was doing it." ¹The psychiatrist suggested that, if treated, Eddings would no longer pose a threat to society.

At the conclusion of all the evidence, the trial judge weighed the evidence of aggravating and mitigating

¹The psychiatrist suggested that, at the time of the murder, Eddings was in his own mind shooting his stepfather--a policeman who had been married to his mother for a brief period when Eddings was seven. The psychiatrist stated "I think that given the circumstances and the facts of his life, and the facts of his arrested development, he acted as a seven year old seeking revenge and rebellion; and the act--he did pull the trigger, he did kill someone, but I don't even think he knew that he was doing it." Appx. 172.

circumstances. He found that the State had proved each of the three alleged aggravating circumstances beyond a reasonable doubt.² Turning to the evidence of mitigating circumstances, the judge found that Eddings' youth was a mitigating factor of great weight: "I have given very serious consideration to the youth of the Defendant when this particular crime was committed. Should I fail to do this, I think I would not be carrying out my duty." But he would not consider in mitigation the ^{circumstances} ~~evidence~~ of Eddings' ~~unhappy~~ upbringing and emotional disturbance: "... the Court cannot be persuaded entirely by the ... fact that the youth was sixteen years old when this heinous [314] crime was committed. Nor can the Court in following the law, in my opinion, consider the fact of this young man's violent background." (emphasis added). Finding that the

²The trial judge found first that the crime was "heinous, atrocious, and cruel" because "designed to inflict a high degree of pain ... in utter indifference to the rights of Patrolman Crabtree." Second, the judge found that the crime was "committed for the purpose of avoiding or preventing a lawful arrest or prosecution." The evidence was sufficient to indicate that at the time of the offense Eddings did not wish to be returned to Missouri and that in stopping the car the Officer's intent was to make a lawful arrest. Finally, based on two threatening statements made by Eddings in the wake of the arrest, the judge found a strong likelihood that Eddings would again commit a criminal act of violence if released.

only mitigating circumstance was Eddings' youth and finding further that this circumstance could not outweigh the aggravating circumstances present, the judge sentenced Eddings to death.

The Court of Criminal Appeals affirmed the sentence of death. It found that each of the aggravating circumstances alleged by the State had been present. It recited the mitigating evidence presented by Eddings in some detail, but in the end it agreed with the trial court that only the fact of Eddings' youth was properly considered as a mitigating circumstance:

"[Eddings] also argues his mental state at the time of the murder. He stresses his family history in saying he was suffering from severe psychological and emotional disorders, and that the killing was in actuality an inevitable product of the way he was raised. There is no doubt that the petitioner has a personality disorder. But all the evidence tends to show that he knew the difference between right and wrong at the time he pulled the trigger, and that is the test of criminal responsibility in this State. ... For the same reason, the petitioner's family history is useful in explaining why he behaved the way he did, but it does not excuse his behavior."

II

In Lockett v. Ohio, 438 U.S. 586 (1978), CHIEF JUSTICE BURGER, writing for the plurality, stated the rule which we apply today:³

"[W]e conclude that the Eighth and Fourteenth Amendments require that the sentencer ... not be precluded from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." Id. at 604.

Recognizing "that the imposition of death by public authority is ... profoundly different from all other penalties," the plurality held that the sentencer must be free to give "independent mitigating weight to aspects of the defendant's character and record and to circumstances of the offense proffered in mitigation." Id. at 605. Because the Ohio death penalty statute only permitted consideration of three mitigating circumstances, the Court found the statute to be invalid.

As THE CHIEF JUSTICE explained, the rule in Lockett is the product of a considerable history reflecting the law's

³Because we decide this case on the basis of Lockett v. Ohio, 438 U.S. 586 (1978), we do not reach the question of whether the eighth amendment forbids the execution of a defendant who was 16 at the time of the offense.

2 years of age

effort to develop a system of capital punishment at once
 consistent and principled but also humane and sensible to
 the uniqueness of the individual. Since the early days
 of the common law, the legal system has struggled to
 accommodate these twin objectives. Thus, the common law
 began by treating all criminal homicides as capital
 offenses, with a mandatory sentence of death, ^{later,} ~~but then~~
~~sought to~~ ^{it} allow ^{ed} of exceptions, first through an exclusion
 for those entitled to claim benefit of clergy and then by
 limiting capital punishment to murders upon "malice
 prepensed." In ~~our own~~ ^{this} country we attempted to soften
 the rigor of the system of mandatory death sentences we
 inherited from England, first by grading murder into
 different degrees of which only murder of the first degree
 was a capital offense and then by committing use of the
 death penalty to the absolute discretion of the jury. By
 the time of our decision in Furman v. Georgia, 408 U.S.
 238 (1972), the country had moved so far from a mandatory
 system that the imposition of capital punishment ~~in this~~
^{frequently} ~~country~~ had become arbitrary and capricious.

Beginning with the decision in Furman, the Court has attempted to provide ~~guidelines~~ ^{standards} for a constitutional death penalty that would serve both goals of measured, consistent application and fairness to the ~~individual~~ ^{accused}. Thus, in Gregg v. Georgia, 428 U.S. 153 (1976), the plurality held that the danger of an arbitrary and capricious death penalty could be met "by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance." Id. at 195. By its requirement that the jury find one of the aggravating circumstances listed in the death penalty statute, and by its direction to the jury to consider "any mitigating circumstances," the Georgia statute properly confined and directed the jury's attention to the circumstances of the particular crime and to "the characteristics of the person who committed the crime." Id. at 197.⁴

⁴"[T]he jury's attention is focused on the characteristics of the person who committed the crime; ... Are there any special facts about this defendant that mitigate against imposing capital punishment (e.g., his youth, the extent of his cooperation with the police, his emotional state at the time of the crime)." 428 U.S., at 197..

Similarly, in Woodson v. North Carolina, 428 U.S. 280 (1976), the plurality held that mandatory death sentencing was not a permissible response to the problem of arbitrary ~~and wanton~~ jury discretion. As the history of capital punishment had shown, such an approach to the problem of discretion could not succeed while the eighth amendment required that the individual be given his due: "the fundamental respect for humanity underlying the Eighth Amendment ... requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death." Id. at 304.⁵ See Roberts (Harry) v. Louisiana, 431 U.S. 633 (1977); Roberts (Stanislaus) v. Louisiana, 428 U.S. 325 (1976).

Thus, the rule in Lockett followed from the

⁵"A process that accords no significance to relevant ~~facets~~ of the character and record of the individual offender or the circumstances of the particular offense excludes from consideration in fixing the ~~ultimate~~ punishment of death the possibility of compassionate or mitigating factors stemming from the diverse frailties of humankind. It treats all persons convicted of a designated offense not as uniquely individual human beings." Ibid

5th -
I can't
change
a quote!

earlier decisions of the Court and from the Court's

insistence that capital punishment be imposed fairly, and

with reasonable
consistently, or not at all. By requiring that the

sentencer be permitted to focus "on the characteristics of

the person who committed the crime," Gregg v. Georgia, 428

U.S., at 197, the rule in Lockett *recognizes that* ~~reflects the demand of~~

"justice" *... requires ...* that "there be taken into account the

circumstances of the offense together with the character

and propensities of the offender." Pennsylvania v. Ashe,

302 U.S. 51, 55 (1937). By holding that the sentencer in

capital cases must be permitted to consider any relevant

mitigating factor, the rule in Lockett recognizes that a

consistency produced by ignoring individual differences is

a false consistency.

III

We now apply the rule in Lockett to the

circumstances of this case.⁶ The trial judge stated that

⁶Eddings did not argue to the trial court or to the Court of Criminal Appeals on his direct appeal that the sentencing procedure violated the rule in Lockett. Nor did he include the argument on Lockett in his petition for certiorari. Even so, we believe that in the circumstances here it is appropriate to treat the question as one raised below and properly before us.

~~To begin with,~~ Eddings did raise the argument in Footnote continued on next page.

"in following the law," he could not "consider the fact of this young man's violent background." There is no dispute that by "violent background" the trial judge was referring to the mitigating evidence of Eddings' family history.⁷

his petition for rehearing to the Court of Criminal Appeals. In that petition, he explicitly argued that the failure of the trial court or Court of Criminal Appeals to consider his emotional condition or family background as mitigating circumstances violated the decision of this Court in Lockett v. Ohio, 438 U.S. 586 (1980). See Petition for Re-Hearing and Supporting Brief, Proposition III, at 10 ("This Court, by its interpretation of mitigating circumstances, has effectively limited the scope of mitigation and that limitation renders the Oklahoma death penalty statute unconstitutional").

The Court of Criminal Appeals will entertain new arguments upon a petition for rehearing as a matter of course. Rule 1.18 provides that a petition for rehearing "shall briefly state the grounds upon which counsel relies for a hearing and show either that some question decisive of the case and duly submitted by the counsel has been overlooked by the Court; or, that the decision is in conflict with an express statute or controlling decision to which the attention of the Court was not called either in brief or oral argument" (emphasis added). See Bias v. State, 561 P.2d 523, 538 (1977); Cooper v. State, 432 P.2d 951 (1967). The Court of Criminal Appeals denied Eddings' petition for rehearing stating that it had given it full consideration and had been "fully advised in the premises." See Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 476 (1975).

Moreover, in the interests of justice we may consider a plain error in the record even when not argued below or in the petition for certiorari. See Rule 34.1(a), Rules of the Supreme Court; 28 U.S.C. § 2106. We have used this power sparingly but it is applied appropriately "in a case such as this, where the death penalty was imposed in a plainly unconstitutional manner." Beck v. Alabama, 447 U.S. 625, 631 n.6 (1980). Cf. Wood v. Georgia, ___ U.S. ___, ___ n.5 (1981); Vachon v. New Hampshire, 414 U.S. 478 (1974); Stern & Gressman, Supreme Court Practice § 6.27, at 460 (in review of state cases, "the Court doubtless limits its power to notice plain error to those situations where it feels the error is so serious as to constitute a fundamental unfairness in the proceedings").

⁷Citation to Briefs and Transcript of Oral argument.

From this statement it ^{is clear} ~~appears~~ that the trial judge did not evaluate the evidence in mitigation and find it wanting as a matter of fact, rather he found that as a matter of law he was unable even to consider the evidence.

The Court of Criminal Appeals took the same approach. It found that the evidence in mitigation was not relevant because it did not tend to provide a legal excuse from criminal responsibility. Thus the court conceded that Eddings had a personality disorder, but cast this evidence aside on the basis that "he knew the difference between right and wrong ... and that is the test of criminal responsibility." Similarly, the evidence of Eddings' family history was "useful in explaining" his behavior, but it did not "excuse" the behavior. From these statements it appears that the Court of Criminal Appeals ^{also} ~~only~~ considered that evidence to be mitigating which would tend to support a legal excuse from criminal liability.

We find that the limitations placed by these courts upon the mitigating evidence they would consider violated the rule in Lockett. Just as the state may not

by statute preclude the sentencer from considering any mitigating factor, neither may the sentencer, refuse to consider, as a matter of law, any relevant mitigating evidence. In this instance, it was as if the trial judge had instructed a jury to disregard the mitigating evidence Eddings proffered on his behalf. The sentencer, and the Court of Criminal Appeals on review, may find that relevant mitigating evidence is entitled to little weight. But they may not exclude such evidence from their consideration in the first place.

Nor do we doubt that the evidence Eddings offered was relevant mitigating evidence. Eddings was a youth of 16 years at the time of the murder. Evidence of a difficult family history and of emotional disturbance is typically introduced by defendants in mitigation. See McGautha. Perhaps typically, such evidence is given little weight. But when the defendant was 16 years old at the time of the offense, there can be little doubt that evidence of a ^{turbulent} ~~troubled~~ family history, ^{of beating by a harsh father} ~~and of~~ emotional disturbance is of the utmost relevance and importance.

The trial judge recognized that youth must be considered a relevant mitigating factor. But youth is more than a chronological fact. It is a ^{time and} condition of life ₁ when a person may be most susceptible to influence and to psychological damage. ~~To consider Eddings' youth must be~~

A
to consider not only his bare age but those aspects of his personal history and development that are of such importance precisely because he was so young.⁸ The fact that Eddings' was 16 years old tells us little. The fact that he was a juvenile with severe emotional problems and with a neglectful, perhaps violent, family background tells us a great deal.

On remand, ⁹the the state courts must consider this evidence and weigh it against the evidence of the aggravating circumstances.⁹ We do not weigh the evidence for them. We require only that they

⁸Quote from Juvenile Justice and Delinquency Prevention, Report of the Task Force on Juvenile Justice and Delinquency Prevention, National Advisory Committee on Criminal Justice Standards and Goals, 1976.

⁹Even were we uncertain that the Court of Criminal Appeals refused to consider the evidence of mitigation as a matter of law we would still remand. At the very least, the opinion by that Court is ambiguous and in these circumstances a remand for clarification, if not for reconsideration of all the evidence in mitigation is appropriate.

you
I'd
omit
this -
at least until
we see different

consider all of the relevant evidence proffered by Eddings
in mitigation.

Accordingly, the judgment is reversed to the
extent that it sustains the imposition of the death
penalty, and the case is remanded for further proceedings.

not inconsistent with this opinion.

*David -
check this
language
in remanding
to state courts*

Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults. Particularly, "during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment" expected of adults. Bellotti v. Baird, U.S.____ U.S.____ at ____ (1979). In a word, even the normal 16-year old customarily lacks the maturity of adults. In this case, Eddings was not a normal 16-year old; he had been deprived of the care, concern and parental attention that children deserve. On the contrary, he was a juvenile with severe emotional problems, and had been raised in a neglectful and sometimes even violent family background. Moreover, there was testimony that Eddings' mental and emotional development were at a level several years below his chronological age.

All of this is not to suggest an absence of responsibility for the crime of murder, deliberately committed in this case.* Rather, it is to say that although the chronological age of a minor is itself a relevant mitigating factor, other circumstances make clear in this case the relevance also of the background and mental and emotional age of this defendant.

*We are not unaware of the extent to which minors engage increasingly in violent crime. Nor do we suggest an absence of legal responsibility. We are concerned here with the severity of the ultimate penalty: the death sentence imposed for the crime of murder by an emotionally disturbed youth with a disturbed child's immaturity.

df1 November 17, 1981

80-5727

To: Justice Powell
From: David
Re: Eddings--No. 80-5727

I wonder if you might cast your eye over this draft to see if it's what you had in mind. I still need to add several footnotes, and it might be worthwhile to flesh out the discussion of youth as a mitigating circumstance either in footnote or text.

I don't view the draft as an extension of Lockett or even really as a clarification of Lockett. Much more it is a defense of Lockett. I was hoping that through this approach the Chief might decide to reconsider his vote. Now that he has assigned himself the dissent, I don't suppose he will be inclined to shift. But I did write the draft with him in mind, as you will see.

If you would prefer to wait to look at this draft until it is completely finished, I will certainly understand.

lfp/ss 11/17/81

MEMORANDUM

TO: David DATE: Nov. 17, 1981
FROM: Lewis F. Powell, Jr.

80-5727 Eddings v. Oklahoma

Your draft of 11/16 is excellent.

Apart from quite minor editing, and the suggested revision of page 16, I have made no changes.

I agree that we should "flesh out the discussion of youth as a mitigating circumstance". I ^{have} done this to some extent in my rider for page 16. There are other cases that you might take a look at in addition to my citation of Bellotti. I think Justice Stewart's concurring opinion in Danforth may have said something about youth, and possibly I did in my recent concurring opinion in the Utah abortion case. I cited Frankfurter in my Bellotti opinion. Feel entirely free to revise or edit what I have written, and perhaps supplement it in a footnote.

We can be sure that the dissent will emphasize Eddings' statements and absence of remorse after the murder. I think it might be well to make a more specific reference to these at this time.

You have indeed made excellent use of the authorities, and particularly Lockett. Although I have learned from experience not to be optimistic about the

change of votes, I think you have made it particularly difficult for some of the Brothers to dissent.

I now suggest that you follow our customary procedure. Have the clerk you select as editor take a close look at form and substance. If there are substance changes, I would like to see them before we go to a Chambers Draft. When that is in hand, all five of us should take a close look. I view the case as important. I do not wish to sound like I have joined the school of "send 'em to Yale, and not to jail". I have a hunch that our system, with the Youth Offender Act, and "juvenile justice", is too lenient on many teenagers who persistently engage in violent crime. But capital punishment is something else.

L.F.P., Jr.

lfp/ss 11/17/81

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L.F.P., Jr.

about this case.
 Even a young "tough"
 like this one lack the
 maturity & judg. to appreciate
 the enormity of taking a life
 unlawfully. Any ideas?

Deny
 unless
 I can
 think
 of a theory
 to Remand
 or even
 Grant

PRELIMINARY MEMORANDUM

March 6, 1981 Conference
 List 2, Sheet 1
 No. 80-5727

CAPITAL CASE (Stay granted)
 Cert to Okla Ct of Crim App
 (Brett for ct) (Cornish and
 Bussey each concurring separately)

Eddings

v.

Oklahoma

State/criminal

Timely

1. SUMMARY: Petr raises three challenges to his death sentence: (1) that one who was 16 years old at the time of the murder cannot be sentenced to death; (2) that the murder which petr committed was not "especially heinous, atrocious or cruel;" and (3)

Deny - GM

refusal to provide funds for an investigator and a psychiatrist.

2. FACTS and DECISION BELOW: In March 1977, when he was 16 years old, petr took his brother's car and run away from home with two friends and his sister. By all accounts, petr's home was a tragic one. His parents had divorced when he was two, and he had spent several years moving back and forth between his mother's home, his father's, and "group homes" run by the state. According to petr's testimony, his stepfather beat him and his mother was a prostitute. By the age of 14, petr had been charged with burglary and been made a ward of the juvenile court. When 15 years old, petr was charged with assault with intent to do bodily harm and was charged with another burglary. In March 1977, petr was living at home on probation, which petr broke by running away.

While driving through Okla in this flight from home, petr and his friends stopped at a restaurant alongside the interstate highway. As petr was returning to the highway, he dropped a cigarette on the floor of the car and momentarily lost control of the car while picking the cigarette up. A customer at the restaurant noticed petr's car momentarily swerve off the road, and he reported his observation to Patrolman Crabtree, of the Okla Highway Patrol, who happened also to be at the restaurant. Crabtree then pursued petr and eventually signaled to petr to pull off the road. One of petr's friends testified at trial that petr then said, "If the fucking cop harrasses me, I'll shoot him." As Crabtree approached petr's car, petr loaded one of three guns he had taken from his mother's house. When Crabtree was about six feet from the

car, petr stuck the shotgun out of his window and shot Crabtree squarely in the chest. Petr immediately drove away. Crabtree died.

After a hearing, the Okla juvenile ct certified that petr could be charged and tried as an adult. Petr does not raise any challenges to this hearing. Petr later pleaded nolo contendere to first degree murder. At a sentencing hearing, the state presented three highway patrolmen, the passengers in petr's car, some passersby on the highway, a medical examiner, and a firearms expert as witnesses. On his behalf, petr presented his juvenile officer, a ct-appointed psychologist, a professor of sociology, and a private psychiatrist. None of the three expert witnesses had interviewed petr for more than an hour; and they had interviewed him about a year earlier, before the certification hearing in the juvenile ct. The trial judge found three aggravating circumstances: (1) that the murder was "heinous, atrocious and cruel," (2) that it was committed for the purpose of avoiding a lawful arrest, and (3) that petr constitutes a threat to society. The judge found one mitigating circumstance: that petr was only 16 years old at the time of the murder.

The Okla Ct Crim App affirmed over petr's several contentions. Petr repeats the following three in this petn.

First, the ct rejected petr's argument that the death sentence violates the 8th Amendment when imposed upon one who was 16 years old at the time of the crime. In the ct's view, the 8th Amendment requires only that petr's age be considered as a mitigating circumstance; but youth does not bar the death sentence.

The ct also noted that the juvenile ct had certified petr to stand trial as an adult, his youth notwithstanding.

Second, the ct rejected petr's argument that his sentence was unconstitutional because of the vagueness of the aggravating circumstance that it was "heinous, atrocious and cruel." Noting that Crabtree had had no reason to treat this incident as anything more than a routine traffic stop, and therefore had no reason to prepare himself for a confrontation, the ct concluded that this was a cold-blooded murder which was "wicked," shockingly evil," and "designed to inflict a high degree of pain with utter indifference to ... the suffering of others."

Third, the ct rejected petr's argument that the State should have provided him with funds to pay for an investigator and a psychiatrist. Petr relied on an Okla statute that provides funds for a public-defenders office, at county expense, in counties with populations of more than 200,000. (Okla has two counties of this size.) Public defenders in such counties are authorized to use county funds to hire investigators where necessary. In smaller counties, Okla statute does not provide for a public-defenders office. Rather, the statute provides that the courts may appoint counsel as necessary from the local bar and pay them fees from a court fund. Such appointed counsel are not authorized by statute, as public defenders are in larger counties, to hire investigators. The ct in this case held that the distinction between counties is rational because larger counties have more indigent criminal defenders. For that reason, larger counties need a permanent public-defenders office, and attendant staff, that smaller counties

do not need. In any event, the ct noted that petr had pleaded nolo contendere. Petr therefore did not need an investigator of facts. Nor, the ct concluded, did petr need funds for another psychiatrist, for petr had presented psychiatrists at the sentencing hearing who testified on his behalf, as they had at the certification hearing.

3. CONTENTIONS:

(1) Petr contends that the imposition of a death sentence upon one who was 16 years old at the time of his crime is cruel and unusual punishment. In support of his contention that "child executions" are unconstitutional, petr notes the national recognition of the need for a juvenile justice system separate from the criminal-justice system for adults. Petr also notes that three states (Nev., Tenn, Texas) statutorily bar executions of those under 18 years old. Petr also notes that only 20 out of 444 prisoners on death row throughout the nation were under 20 years old as of Dec 31, 1976. Finally, petr contends that this Ct emphasized the significance of age in considering a death sentence in Roberts v. Louisiana, 431 U.S. 633, 637 (1976).

In response, the State contends that youth should be a mitigating circumstance, as in this case, but should not be an absolute constitutional bar to the death sentence.

(2) Petr contends that the ct below erred in holding that the "especially heinous" circumstance is not unconstitutionally vague. In petr's view, there was nothing "especially heinous" in this murder, for the shooting was not preceded by any torture and Crabtree "presumably" died instantly. [There is no indication in the opinion of the Ct Crim App as to how quickly Crabtree died.]

Petr further contends that this murder surely was less reprehensible than the murder in Godfrey v. Georgia, --- U.S. --- (1980).

Finally, petr complains that the Ct Crim App affirmed the finding of this aggravating circumstance on the ground that the murder was "wicked" and "shockingly evil." These are not the words of the statute, petr contends.

In response, the State notes that this Ct has not invalidated statutory aggravating circumstances such as this one. The State further contends that the facts of this case support the finding.

(3) Petr contends that he was denied due process and equal protection by the trial ct's refusal to provide him with funds to obtain a psychiatric examination and an investigator. Petr contends that such assistance was necessary to an effective defense. The expert witness whom he presented were ineffective, petr contends, because they had not examined him in over a year since the certification hearing.

In response, the State notes that the Okla statute assures that every indigent criminal defendant receives a lawyer. In the State's view, the Constitution does not require that the states also provide expert witnesses. In any event, the State contends that petr was not prejudiced by the trial ct's refusal in this case because petr did not need an investigator and because petr in fact had expert witnesses.

4. DISCUSSION: I recommend a denial. So long as the 8th Amendment does not prohibit the death sentence, I see no sound basis for drawing a line under the 8th Amendment on the basis of age. Age

must be considered as a mitigating circumstance, to be sure. See Roberts v. Louisiana, supra. But the sentencing ct did consider petr's age in mitigation in this case. Second, the question whether the facts of this case present an "especially heinous" murder is a question that this Ct, in the main, has decided to leave to the states. The decision of the Ct Crim App in this case does not warrant this Ct's review. Finally, petr has failed to show that Okla's method of providing indigent criminal defendants with counsel deprived him of assistance or experts.

There is a response.

02/27/81

Morgan

Opin in petr

GM 03/05/81

To: Mr. Justice Powell

From: Greg Morgan

Re: No. 80-5727: Eddings v. Oklahoma: SUPPLEMENTAL MEMO

Here is a summary of what I mentioned to you yesterday evening:

(1) Petr has been represented by the same counsel since the day he was arrested. Neither in this petn nor in his petn arising from his certification as an adult offender has petr raised any claim about the competency of his lawyer.

(2) Oklahoma law allows an accused to plead nolo contendere to first-degree murder. Petr did so. Okla. law also provides that one who pleads nolo shall be sentenced by the trial court rather than by a jury.

(3) Petr sought cert in 1978, raising several claims about the juvenile-court hearing in which he was certified to be tried as an adult. Over claims that he had been denied sufficient time to prepare for the hearing and a claim that he had a constitutional right to treatment as a juvenile, the Court denied cert. 436 U.S. 921 (No. 77-6504). *Here before*

(4) Petr does not claim that he was denied any opportunity to present mitigating evidence at the sentencing hearing. Furthermore, the trial ct and the Ct Crim App expressly considered petr's youth in mitigation.

(5) We cannot "GVR" on Godfrey v. Georgia, for the Olka Ct Crim App expressly considered Godfrey on petr's petr for rehearing, and it held that Godfrey did not require any change in its decision.

In sum, I continue to recommend a denial. To be sure, I too find it difficult to believe that one so young could have murdered so callously if he understood the enormity of his actions. But the combined findings of the juvenile court and the sentencing judge stand against my disbelief. The juvenile court, in the course^e of certifying petr to stand trial as an adult, credited the testimony of two expert witnesses who had examined petr. Those witnesses testified that petr understands the difference between right and wrong and understood the consequences of his actions when he shot the policeman. The sentencing judge heard and credited similar evidence. And, of course, both the juvenile court and the sentencing judge credited this testimony over the contradictory testimony from experts on petr's behalf.

I look forward with great interest to seeing what the other Justices make of this case.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

*I. will ask
that case
be relisted*

March 18, 1981

MEMORANDUM TO THE CONFERENCE

Re: 80-5727 - Eddings v. Oklahoma

Because of my concern about the Court's action in this case, I have prepared the attached dissenting opinion. In all candor, however, I have not yet definitely decided that I will publish it.

Respectfully,

/s/

Attachment

TO: THE CHIEF JUSTICE

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

FROM: Mr. Justice Stevens

80-5727 - Eddings v. Oklahoma

Circulated: MAR 18 '81

Recirculated: _____

JUSTICE STEVENS, dissenting.

In 1977, at the age of sixteen, petitioner murdered an Oklahoma State Highway Patrol Officer. Following his arrest, petitioner was charged with first-degree murder. The trial court, after a hearing, granted the State's motion to certify petitioner to stand trial as an adult. That ruling was upheld on appeal, see In re M.E., 584 P.2d 1340 (Okla. Crim. App. 1978), and this Court denied a petition for writ of certiorari. 436 U.S. 921. Petitioner then entered a plea of nolo contendere to the charge of murder in the first degree.¹ After a hearing on aggravating and mitigating circumstances, the trial court sentenced petitioner to death.² The Oklahoma Court of Criminal

¹ Under Oklahoma law, the legal effect of a plea of nolo contendere is the same as that of a guilty plea. See Okla. Stat., Tit. 22, § 513 (Supp. 1978); see also Okla. Stat., Tit. 21, § 701.9 (Supp. 1978).

² The trial court found that three aggravating circumstances existed: (1) the murder was especially heinous, atrocious, or cruel; (2) the murder was committed for the purpose of avoiding or preventing a lawful arrest or prosecution; and (3) the defendant would constitute a continuing threat to society. These aggravating circumstances outweighed, in the trial court's

Appeals affirmed petitioner's conviction and sentence. See Eddings v. State, 616 P.2d 1159 (1980). That court later granted a temporary stay of execution. App. to Petn. for Cert. 21-22. Petitioner now requests that this Court issue a writ of certiorari, arguing primarily that imposition of the death penalty in his case would be cruel and unusual punishment forbidden by the Eighth Amendment.³

The Eighth Amendment defines the outer limits on the severity of the punishment that a State may impose upon a criminal offender. See Ingraham v. Wright, 430 U.S. 651, 666-667. The Amendment draws "its meaning from the evolving standards of decency that mark the progress of a maturing society." Trop v. Dulles, 356 U.S. 86, 101 (plurality opinion). Because judges routinely confront the difficult responsibility of prescribing particular punishments for particular offenders, the evolution of those standards both affects and is affected by the performance of the judicial function.⁴ This case presents this

judgment, the sole mitigating circumstance, petitioner's youth.

³ "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const., Amdt. 8.

⁴ In this respect, the Eighth Amendment is comparable to the Due Process Clause. Because judges routinely confront procedural questions, the evolution of standards of procedural fairness both affects and is affected by the performance of the judicial function. In giving meaning to the words "due process of law," the Court has referred to the "flexibility and capacity for growth and adaptation [that] is the peculiar boast and excellence of the common law," Hurtado v. California, 110 U.S. 516, 530, and has firmly refused "to stamp upon our jurisprudence the

Court with an exceptional opportunity--and in my opinion an obligation--to give particular meaning to those standards. The question that the case presents is whether "the evolving standards of decency" embodied in the Eighth Amendment are transgressed by the imposition of the death penalty as punishment for an offense committed by a sixteen-year-old juvenile.

The Court's disposition of that question by denial of the petition for writ of certiorari is exceptional for two reasons. First, the Court's action today is tantamount to a ruling on the merits because, unlike most votes on petitions for certiorari, it is safe to assume that no Justice would vote to deny this petition if he had any doubt concerning the merits of the issue.⁵ Second, it is surely exceptional for the highest court in any civilized nation to place its stamp of approval on the execution of a juvenile.⁶

unchangeableness attributed to the laws of the Medes and Persians." Id., at 529.

⁵ The principal reason for not publishing or explaining dissents from denials of certiorari is therefore not applicable in this case. Cf. Singleton v. Commissioner of Internal Revenue, 439 U.S. 940, 942-946 (Opinion of STEVENS, J.).

⁶ In its effort to define the "evolving standards of decency" that give meaning to the Eighth Amendment, the Court in the past has examined the practices of other nations with respect to the punishment of criminals. See, e.g., Coker v. Georgia, 433 U.S. 584, 596, n. 10 (plurality opinion); Trop v. Dulles, 356 U.S. 86, 102-103 (plurality opinion). In the present case, it should be noted that Article 6 of the International Covenant on Civil and Political Rights of the International Bill of Human Rights provides: "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age" United Nations, International Bill of Human Rights 23 (1978). Although

These exceptional circumstances have induced me to record my dissent from the denial of certiorari in this case. My perception of the controlling constitutional standard persuades me that JUSTICE BRENNAN and JUSTICE MARSHALL are correct in their opinion that this death sentence should be vacated. I therefore respectfully dissent.

Congress has not ratified the Covenant, petitioner informs us that it has been signed or ratified by 73 nations. See also Weissbrodt, U.S. Ratification of the Human Rights Covenants, 63 Minn. L. Rev. 35, 40 (1978).

Of course, the practice in this country is of greater relevance than that in foreign nations. A number of states prohibit the execution of persons who were below a specified age at the time of their offense. See, e.g., Cal. Penal Code § 190.5 (West Supp. 1980); Conn. Gen. Stat. Ann. § 53a-46a(f) (Supp. 1980); Nev. Rev. Stat. § 176.025 (1979). And the statutes of many other states specify that an offender's youth is a mitigating circumstance to be considered in determining the propriety of the death penalty. See, e.g., Fla. Stat. Ann. § 921.141(6)(g) (West Supp. 1980); Md. Ann. Code, Art. 27, § 413(g)(5) (Supp. 1980); Tenn. Code Ann. § 39-2404(j)(7) (Supp. 1979). See generally Weissbrodt, supra, at 72-73, n. 210.

Court
 Argued 19...
 Submitted 19...

Voted on 19...
 Assigned 19...
 Announced 19...

No. 80-5727

g p s's opinion is on ATEX

noted 270 3/20

EDDINGS

vs.

ATEX

OLKAHOMA

CAPITAL CASE - stay granted by lower court. Relisted for Mr. Justice Stevens.

Linda let me see it

Relisted for L.F.P.

g p s

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		NOT VOTING
		G	D	N	POST	DIS	APP	REV	APP	G	D	
Burger, Ch. J.												
Brennan, J.												
Stewart, J.												
White, J.												
Marshall, J.												
Blackmun, J.												
Powell, J.												
Rehnquist, J.												
Stevens, J.												

may Circulate

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

77. 1, 3
OP57271, March 19, 1981 DRB

From: Mr. Justice Stevens

Circulated: _____

Recirculated: MAR 20 '81

Printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

MONTY LEE EDDINGS v. STATE OF OKLAHOMA

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF
APPEAL FOR STATE OF OKLAHOMA

No. 80-5727. Decided March —, 1981

JUSTICE STEVENS, dissenting.

In 1977, at the age of sixteen, petitioner murdered an Oklahoma State Highway Patrol Officer. Following his arrest, petitioner was charged with first-degree murder. The trial court, after a hearing, granted the State's motion to certify petitioner to stand trial as an adult. That ruling was upheld on appeal, see *In re M. E.*, 584 P. 2d 1340 (Okla. Crim. App. 1978), and this Court denied a petition for writ of certiorari. 436 U. S. 921. Petitioner then entered a plea of *nolo contendere* to the charge of murder in the first degree.¹ After a hearing on aggravating and mitigating circumstances, the trial court sentenced petitioner to death.² The Oklahoma Court of Criminal Appeals affirmed petitioner's conviction and sentence. See *Eddings v. State*, 616 P. 2d 1159 (1980). That court later granted a temporary stay of execution. App. to Pet. for Cert. 21-22. Petitioner now requests that this Court issue a writ of certiorari, arguing primarily that imposition of the death penalty in his case would be cruel and unusual punishment forbidden by the Eighth Amendment.³

¹ Under Oklahoma law, the legal effect of a plea of *nolo contendere* is the same as that of a guilty plea. See Okla. Stat., Tit. 22, § 513 (Supp. 1978); see also Okla. Stat., Tit. 21, § 701.9 (Supp. 1978).

² The trial court found that three statutory aggravating circumstances existed: (1) the murder was especially heinous, atrocious, or cruel; (2) the murder was committed for the purpose of avoiding or preventing a lawful arrest or prosecution; and (3) the defendant would constitute a continuing threat to society. These aggravating circumstances outweighed, in the trial court's judgment, the sole mitigating circumstance, petitioner's youth.

³ "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U. S. Const., Amdt. 8.

The Eighth Amendment defines the outer limits on the severity of the punishment that a State may impose upon a criminal offender. See *Ingraham v. Wright*, 430 U. S. 651, 666-667. The Amendment draws "its meaning from the evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U. S. 86, 101 (plurality opinion). Because judges routinely confront the difficult responsibility of prescribing particular punishments for particular offenders, the evolution of those standards both affects and is affected by the performance of the judicial function.¹ This case presents this Court with an exceptional opportunity—and in my opinion an obligation—to give particular meaning to those standards. The question that the case presents is whether "the evolving standards of decency" embodied in the Eighth Amendment are transgressed by the imposition of the death penalty as punishment for an offense committed by a sixteen-year-old juvenile.

The Court's disposition of that question by denial of the petition for writ of certiorari is exceptional for two reasons. First, the Court's action today is tantamount to a ruling on the merits because, unlike most votes on petitions for certiorari, it is safe to assume that no Justice would vote to deny this petition if he had any doubt concerning the merits of the issue.² Second, it is surely exceptional for the highest court

¹In this respect, the Eighth Amendment is comparable to the Due Process Clause. Because judges routinely confront procedural questions, the evolution of standards of procedural fairness both affects and is affected by the performance of the judicial function. In giving meaning to the words "due process of law," the Court has referred to the "flexibility and capacity for growth and adaptation [that] is the peculiar boast and excellence of the common law," *Hurtado v. California*, 110 U. S. 516, 530, and has firmly refused "to stamp upon our jurisprudence the unchangeableness attributed to the laws of the Medes and Persians." *Id.*, at 529.

²The principal reason for not publishing or explaining dissents from denials of certiorari is therefore not applicable in this case. Cf. *Singleton v. Commissioner of Internal Revenue*, 439 U. S. 940, 942-946 (Opinion of STEVENS, J.).

in any civilized nation to place its stamp of approval on the execution of a juvenile.⁶

These exceptional circumstances have induced me to record my dissent from the denial of certiorari in this case. My perception of the controlling constitutional standard persuades me that JUSTICE BRENNAN and JUSTICE MARSHALL are correct in their opinion that this death sentence should be vacated. I therefore respectfully dissent.

"In its effort to define the 'evolving standards of decency' that give meaning to the Eighth Amendment, the Court in the past has examined the practices of other nations with respect to the punishment of criminals. See, e. g., *Coker v. Georgia*, 433 U. S. 584, 596, n. 10 (plurality opinion); *Trop v. Dulles*, 356 U. S. 86, 102-103 (plurality opinion). In the present case, it should be noted that Article 6 of the International Covenant on Civil and Political Rights of the International Bill of Human Rights provides: 'Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age. . . .' United Nations, International Bill of Human Rights 23 (1978). Although Congress has not ratified the Covenant, petitioner informs us that it has been signed or ratified by 73 nations. See Weissbrodt, U. S. Ratification of the Human Rights Covenants, 63 Minn. L. Rev. 35, 40 (1978); see generally International Human Rights Treaties, Hearings Before the Senate Committee on Foreign Relations, 96th Cong., 1st Sess. (1980).

Of course, the practice in this country is of greater relevance than that in foreign nations. A number of states prohibit the execution of persons who were below a specified age at the time of their offense. See, e. g., Cal. Penal Code § 190.5 (West Supp. 1980); Conn. Gen. Stat. Ann. § 53a-46a (f) (Supp. 1980); Nev. Rev. Stat. § 176.025 (1979). And the statutes of many other states specify that an offender's youth is a mitigating circumstance to be considered in determining the propriety of the death penalty. See, e. g., Fla. Stat. Ann. § 921.141 (6) (g) (West Supp. 1980); Md. Ann. Code, Art. 27, § 413 (g) (5) (Supp. 1980); Tenn. Code Ann. § 39-2404 (j) (7) (Supp. 1979). See generally Weissbrodt, *supra*, at 72-73, n. 210.

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

3-23-81

Circulated: **MAR 25 1981**

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

MONTY LEE EDDINGS v. STATE OF OKLAHOMA

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF
CRIMINAL APPEALS OF OKLAHOMA

No. 80-5727. Decided March —, 1981

JUSTICE POWELL, dissenting.

a
This case presents the extraordinary situation of a juvenile, now just 20, sentenced to death for a murder he committed when he was only 16 years of age. The trial and subsequent proceedings in the Oklahoma courts appear to have been entirely regular, and I have no doubt as to petitioner's guilt. My concern arises solely from the imposition of capital punishment for a crime committed by a 16-year-old youth. Whatever may be said about the capability of some juveniles of this age knowingly to commit shocking crimes, I think a line should be drawn somewhere with respect to the imposition of death as a permissible penalty.¹

In my view, this case never should have been allowed to come this far without the most serious consideration of a grant of clemency by the appropriate state authority. But the case is here,² and I believe the question whether some age limit properly should be drawn under the Eighth Amendment, below which capital punishment would be cruel and unusual, deserves our plenary consideration. Moreover, one

¹ The International Covenant on Civil and Political Rights of the International Bill of Human Rights draws a line at 18 years of age. Article VI thereof provides: "Sentence of death shall not be imposed for crimes committed by persons below 18 years of age. . . ." United Nations, International Bill of Human Rights 23 (1978). To be sure, Congress has not ratified this covenant, but it reflects a judgment widely held by civilized peoples.

² Petitioner seeks review on the ground that in his case the sentence of death would constitute cruel and unusual punishment in violation of the Eighth Amendment.

may hope with reason that during the period of our review the issue will be mooted by an act of clemency.

Accordingly, I would grant the petition for certiorari.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

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<i>Court</i>	<i>Voted on</i>, 19...	
<i>Argued</i>, 19...	<i>Assigned</i>, 19...	No. 80-5727
<i>Submitted</i>, 19...	<i>Announced</i>, 19...	

viii

OLKAHOMA

CAPITAL CASE - stay granted by lower court. Relisted.

Grant
limited
to Q #1

[illegible]

EDDINGS

vs.

OKLAHOMA

Motion of petitioner for appointment of counsel.

[illegible]

May 14, 1981 Conference
List 3, Sheet 4

No. 80-5727

Motion of Petitioner for
Appointment of Counsel

EDDINGS

v.

OKLAHOMA

Petr's counsel, Jay C. Baker, requests appointment as counsel for petr. On Apr. 6, the Court granted petr leave to proceed ifp and granted cert limited to the first question raised by the petn. Applicant has been a member in good standing of the Bar of this Court since 1973. Applicant has represented petr since his arrest for the crime which eventually led to his sentence of death. It is the desire of petr that applicant be appointed as his counsel.

There is no response.

5/1/81

Schickele

PJC

Grant

*Reviewed 10/26 - Thorough & Responsive,
David*

df1 10/24/81

BENCH MEMORANDUM

To: Mr. Justice Powell

October 24, 1981

From: David Levi

No. 80-5727: Eddings v. Oklahoma

Question Presented

Whether the eighth amendment prohibits the execution of a youth, convicted of first degree murder, who was sixteen-years-old at the time of the crime.

I. Facts and Decision Below

The facts are uncontested. I repeat them in perhaps excessive detail. On April 4, 1977, Monty Lee Eddings, a

sixteen year old youth, went to the home of his fourteen year old friend, Gary Molt, and proposed that the two of them runaway from their Camdenton, Missouri homes. Monty was upset because his father had become angry with him the night before when Monty was unloading items from the family van. Gary agreed to go, and the two went to Eddings' home where they took two shotguns and a rifle. Eddings suggested that they could use the guns if they ran out of money, and he sawed the barrel off of one of the shotguns. They put the guns in his brother's Volkswagen and took off for Joplin, Missouri, where they planned to pick up Eddings' sisters.

At Joplin, the boys picked up Eddings' fourteen year old sister, Rhonda, and her fifteen year old friend, Terrie Clevenger. The four teenagers set out driving in a southwesterly direction on Interstate 44. None had a driver's license, none had a destination in mind. They drove aimlessly stopping only to pick up a hitchhiker at the Oklahoma turnpike gates and to purchase soft drinks at a Howard Johnsons. As they were leaving the Howard Johnsons and re-entering the highway, Eddings momentarily lost control of the car, swerved off the road, into a ditch, and then back onto the highway. A service station attendant saw this happen and reported the incident to Officer Crabtree who was having coffee at the Howard Johnson's. The Officer left shortly thereafter to investigate.

Some twenty minutes later, the Officer caught up to the youthful caravan and signalled them to stop. Eddings became angry saying if the "pig tried to stop him, he was going to blow him away" and that "he was tired of being hassled by the pigs." He brought the car to a stop. He reached behind the seat, picked up the shotgun, and loaded it with a single shell. When the Officer approached, he fired, hitting the Officer in the chest. He drove off, shaking, mumbling "mumbo-jumbo," saying "I would rather have shot an Officer than go back to where I live." He told the others to throw the guns out of the car, and he continued driving. They were apprehended by the highway patrol shortly thereafter. Officer Crabtree was dead.

Eddings was arrested and taken to the Creek County Sheriff's Department where he was questioned and held in custody. He stood for an hour or two staring at the wall. At one point he looked over his shoulder at the officers and stated that "if he was loose . . . he would shoot [them] all." Later that evening when the officer refused to turn off the light in his cell Eddings threatened the Officer: "Now I have shot one of you people, and I'll get you too if you don't turn this light out."

Eddings was certified to stand trial as an adult. The court found that he was "capable of knowing right from wrong, and to be held accountable for his acts." 1974 Okla. Sess. Laws 570, ch. 272, §2. The certification was affirmed

on appeal and this court denied cert. At trial, Eddings entered a plea of nolo contendere to the charge of murder in the first degree. A sentencing hearing was then held on the aggravating and mitigating circumstances. At the hearing, Eddings presented evidence of his troubled youth.

Eddings' parents were divorced when he was five, and until he was fourteen he lived with his mother, an alcoholic of loose repute. He lived without any rules or supervision. By the time he was fourteen he could no longer be controlled and his mother sent him to live with his father. Monty's father and stepmother were thrown into turmoil by his addition to their family. His father held a steady job--a butcher in a supermarket--while his stepmother was a school teacher who had a good relationship with Monty. But they, too, could not control the boy. Attempts to reason and talk gave way to physical punishment. His parole officer testified that Monty was scared and bitter, that his father overreacted and used excessive punishment. At age fourteen he was adjudicated a delinquent on four counts of burglarly in the second degree and stealing, and one count of tampering with a motor vehicle. He was placed on probation but some months later was again in trouble for an assault and for mail box vandalim. He was placed in a group home, did well for a time, but was then again adjudged delinquent for several thefts. This last delinquency occurred four months before the murder.

*Mental
age
below*

Three psychologists testified on Eddings' behalf. Their testimony indicated that Eddings had a "sociopathic personality" and that his mental age was several years below that of his chronological age. There was testimony that Monty suffered from rootlessness and that he never recovered from his parents' divorce. One psychologist testified that in killing Officer Crabtree Monty was in reality seeking revenge against the police officer who married his mother after his parents were divorced.

At the conclusion of the evidence, the trial judge sentenced Eddings to death. He found three aggravating circumstances: first, the crime was "heinous, atrocious and cruel"; second, the crime was committed for the purpose of avoiding lawful arrest or prosecution; and third the court found that Monty's threatening statements to the officers after he was taken into custody indicated, beyond a reasonable doubt, that there was a strong likelihood that if released, Eddings would pose a continuing threat of violence to society.

As to mitigating circumstances, the court considered Eddings' youth but not his family background:

"And I want . . . all concerned persons to know, in this particular case I have given very serious consideration to the youth of the Defendant when this particular crime was committed. Should I fail to do this, I think I would not be carrying out my duty. On the other hand, the Court cannot be persuaded entirely by the youthfulness [sic] of the fact that the youth was sixteen years old when this heinous crime was committed. Nor can the Court in following the law, in my opinion, consider the fact of this young man's violent background. ... So not

*Family
background
ignored*

finding any mitigation other than the youthfulness,
and failing to find that it has sufficiently
softened the aggravating circumstances that the
Court has found beyond a reasonable doubt, the Court
has no alternative in this particular case other
than to sentence Monty Lee Eddings to death."

*young age
only
mitigating
circumstances*

The case was automatically appealed to the court of criminal appeals where the sentence was affirmed.

The court of appeals found that there was no eighth amendment ban against imposition of the death sentence on a juvenile. As interpreted by the Supreme Court, the amendment requires only that youth be considered as a mitigating circumstance. Although no one had ever been executed in Oklahoma who was under age 18 when the crime was committed, the capital punishment of a 16-year old could not be considered either cruel or unusual. It was not "unusual" because in a 1924 case the Oklahoma court stated that the "death penalty should not be imposed against a boy under the age of 14 years convicted of murder, unless it clearly appears that the juvenile offender was a person with a sense of responsibility . . . equal to that of an ordinary person of the age 16 years." It was not cruel because capital punishment was not abhorred by public sentiment, nor would the execution cause extreme pain and suffering. Incredibly, the court never asked whether the "evolving standards of a maturing society" condemn not capital punishment in general but the capital punishment of one so young.

Turning to the specific facts of the case, the court of appeals found that the trial judge had correctly weighed the aggravating and mitigating circumstances. The court found that each of the three aggravating circumstances had been properly found. The crime was "especially heinous, atrocious and cruel"; the victim was a police officer who had no warning that he was in danger. The crime was "committed for the purpose of avoiding ... a lawful arrest or prosecution"; the facts of the case support the conclusion that Eddings' shot the officer to avoid being returned to Missouri. Finally, Eddings would "constitute a continuing threat to society"; he made threatening remarks to the officers while in custody and he had an extensive juvenile record including crimes against persons.

These aggravating factors were very serious, outweighing the mitigating fact of his youth. The court of appeals joined the trial judge in rejecting evidence of Eddings' upbringing or mental state as mitigating factors:

The petitioner also argues his mental state at the time of the murder. He stresses his family history in saying he was suffering from severe psychological and emotional disorders, and that the killing was in actuality an inevitable product of the way he was raised. There is no doubt that the petitioner has a personality disorder. But all the evidence tends to show that he knew the difference between right and wrong at the time he pulled the trigger, and that is the test of criminal responsibility in this State. ... For the same reason the petitioner's family history is useful in explaining why he behaved the way he did, but it does not excuse his behavior."

family history

Finding that the sentence of death was not imposed under the influence of passion, that the evidence supported the judge's finding of aggravating circumstances, and that the sentence of death was not excessive or disproportionate, the court of appeals affirmed the death sentence.

II. Analysis

The Court granted cert in this case to determine whether the eighth amendment prohibits the imposition of capital punishment on a juvenile. I will address that question first. My tentative conclusion is that the eighth amendment does not place a per se bar to the capital punishment of juveniles, although certainly there are arguments the other way. Having reached this conclusion, I would suggest that the Court not reach this eighth amendment question at all: for the Court to hold that contemporary standards do not condemn the capital punishment of a juvenile is not merely to describe these standards, it is also, inevitably, to fix the standard and to approve it.

However, I would recommend that the Court overturn this death sentence. It is apparent from the record that neither the trial judge nor the court of appeals considered the full range of "mitigating circumstances" present in this case--particularly Eddings ⁽¹⁾ family background and ⁽²⁾ emotional instability. These mitigating circumstances are of particular

*Family background
& emotional instability
are inseparable in this
case from age*

weight in the case of a juvenile offender. Indeed, one might say that these mitigating circumstances are part and parcel of the more general mitigating circumstance of youth. The Court in Lockett v. Ohio, 438 U.S. 586 (1978), and Roberts v. Louisiana, 431 U.S. 633 (1976), has held that the Eighth and Fourteenth Amendments require that the sentencer consider the full range of possibly mitigating circumstances. The lower courts simply did not do so here.

Yes

Nor do I think that a remand on Lockett would be a futile exercise, and that the state courts would simply re-impose the death penalty. That is possible, of course, but as the fact summary indicates, the aggravating circumstances in this case are quite shaky; I think that there is a good chance that on a remand the trial court will impose a life sentence. In sum, I recommend the equivalent of a grant, vacate, and remand on Lockett.

David would remand on Lockett

But ~~was~~ wasn't Lockett decided before this case? Check this.

A. The Eighth Amendment: Is There a Per Se Prohibition on the Capital Punishment of Juveniles?

In Gregg v. Georgia, 428 U.S. 153, 173 (1976), the Court described the eighth amendment inquiry as a twofold one. First, the amendment encompasses "the evolving standards of decency that mark the progress of a maturing society." This requires "an assessment of contemporary values concerning the infliction of a challenged sanction." Contemporary values are

*Yes:
See
Goodman*

distilled by looking to history and to the actions of legislatures, courts, and juries. Second, and regardless of public perception, the Court may insist that a penalty accord with "the dignity of man." At the least, this requires that the punishment not be excessive: it may not inflict unnecessary pain, and it may not be grossly out of proportion to the severity of the crime.¹

Recognizing that adoption of a per se rule against the capital punishment of juveniles will "[encroach] upon an area squarely within the historic prerogative of the legislative branch--both state and federal--to protect the citizenry through the designation of penalties for prohibitable conduct," Furman v. Georgia, 408 U.S. 238, 418

¹In Ingraham v. Wright, 430 U.S. 651, 667 (1977), you described the Court's eighth amendment jurisprudence: "These decisions recognize that the Cruel and Unusual Punishment Clause circumscribes the criminal process in three ways: First, it limits the kinds of punishment that can be imposed on those convicted of crimes, Estelle v. Gamble, [incarceration without medical care]; Trop v. Dulles, [expatriation for desertion]; second, it proscribes punishment grossly disproportionate to the severity of the crime, e.g., Weems v. United States, [15 years' imprisonment and other penalties for falsifying an official document]; and third, it imposes substantive limits on what can be made criminal and punished as such, e.g., Robinson v. California, [incarceration as a criminal for addiction to narcotics]."

It is not precisely clear to me where the per se rule would fit in this eighth amendment analysis. The best home, I think, would be under the first heading you list above--the kind of punishment. Perhaps, too, one could argue that the death penalty is "grossly disproportionate" when levied upon a juvenile.

David - not
fair to remind
me of what
I've said!

11.

(Powell, J., dissenting), the Court will give greatest weight to the first branch of the eighth amendment inquiry-- the objective indicia of contemporary values. I now turn to some of these objective indicia.

1. Common Law

At common law, children under 7 were conclusively presumed to be incapable of forming criminal intent and thus could not be convicted of any felony. A child between 7 and 14 was presumed to be incapable of forming criminal intent but the presumption was rebuttable by a showing to the jury that the child could distinguish between right and wrong and did understand the nature and illegality of his act. The presumption was extremely strong at age 7 and diminished gradually, disappearing at age 14. A juvenile over 14 was treated as an adult.

Common
Law

Thus, the common law placed no absolute barrier before the imposition of the death penalty upon children under 14. And there is some evidence that the sentence of death was imposed fairly frequently on juveniles in the 18th and 19th centuries. However, execution of the sentence on juveniles under the age of 14 appears to have been extremely rare. According to one researcher, only two children under the age of 14 were executed in the United States in the period 1806 to 1882, and both were slave children.

In England no person under the age of 18 has been executed since 1887. The Children Act, 1908, provided that no person under 16 years of age at the time of conviction should be executed. In 1933 the provision was extended to persons under 18 at the time of conviction and then in 1948 to persons under 18 at the time when the offence was committed.

*No
one
under
18*

2. Statistics in the Modern Period

According to Eddings' brief there were as of May 1, 1981, 63 defendants on death row who were juveniles under the age of 20 at the time of the crime. Of these 17 were under the age of 18 at the time of the crime; six were under the age of 17.

Surprise

Eddings makes a fairly persuasive case that the execution of juveniles has steadily declined in the modern period. Using the best available figures on the age at the time of execution, Eddings has compiled a set of statistics for the period 1864-1967:

	<u>Age</u>	<u>16</u>	<u>17</u>	<u>18</u>	<u>19</u>	<u>Total</u>
1864-1939		6	22	39	47	114
1940-49		7	13	17	21	58

1950-54	0	2	2	10	14
1955-59	0	2	5	2	9
1960-67	0	1	0	1	2

According to this data, the last time someone under the age of 18 was put to death was in 1961 in Alabama. The youngest juvenile executed in recent years was a 14 year old who was sent to the electric chair in South Carolina. No white juvenile under age 18 has been executed since 1948. The above figures would appear to show a marked decline in the imposition of capital punishment on juveniles in the course of this century.

*Last
in
1961 -
20 yrs
ago*

3. Legislative Approaches (9 of 34)

According to the parties 34 states now have death penalty statutes. Of these 34, 8 prohibit the execution of persons under 18 at the time of the offense. These include California, Colorado, Connecticut, Illinois, Nevada, New Mexico, New Hampshire, and Kentucky (effective 1982). In addition Nevada imposes a prohibition at age 16, while Texas sets its limit at age 17. Thus, 9 out of the 34 states permitting capital punishment would not allow the execution of

*Eight
States
- not
under
18*

Eddings, a 16-year old. Another way of putting this, is that 25 states would, and 25 states would not, permit Eddings' execution. That's an even split. Of the 25 states permitting imposition of the death penalty on juveniles, at least 22 of them explicitly denominate youth as a mitigating factor.

At the federal level, S. 1401 was introduced in 1974 to conform the federal capital punishment law to the requirements of Furman. The Bill precluded capital punishment for all defendants who were under 18 at the time of the crime. The Bill passed the Senate but died in the House.

S. 114, a new effort to re-write the federal death provision, is now before the Senate. It was reported favorably out of the judiciary committee on June 9, 1981. Unlike S. 1401, under the terms of this Bill, the fact that the defendant was less than 18 at the time of the crime is only a mitigating factor--it does not place an absolute bar to the death penalty. ?

4. The Model Penal Code

The Model Penal Code death statute states an exclusion for defendants "under 18 years of age at the time of the commission of the crime." §210.6(1)(d). The ALI has never taken a position on whether the death penalty should or should not be imposed on adult offenders. However, it does strongly

not under 18

*ALI
situation
- next
pg.*

15.
oppose the use of this sanction in the case of juvenile murderers:

AL1
.... there is at least one class of murder for which the death sentence should never be imposed. This situation is murder by juveniles. The Institute believes that civilized societies will not tolerate the spectacle of execution of children, and this opinion is confirmed by the American experience in punishing youthful offenders. Subsection (1)(d) therefore excludes the possibility of capital punishment where the actor was under 18 years of age at the time of the homicide. Of course, any bright line of this sort is somewhat arbitrary, and many juveniles of lesser years have the physical capabilities and mental ingenuity to be extremely lethal. The Institute debated a motion to lower the age of exclusion to 14 but rejected that proposal on the ground that, however dangerous some children may be, the death penalty should be reserved for mature adults. It should also be noted that 18 is the limit of juvenile court jurisdiction contemplated in Section 4.10 of the Code. ... The Institute defeated a motion to delete [section (1)(d)] altogether and relegate the offender's age to evaluation as one of several mitigating factors. This decision reflects the view that no juvenile should be executed.

5. State Cases

Eddings cites to a number of cases in which state courts of appeal have overturned a trial court's imposition of a death sentence upon a juvenile. These cases arise in states that permit the sentence of death for a juvenile but require that youth be considered as a mitigating circumstance. See Bracewell v. State, ___ So.2d ___ (Ala. Cr. App. 1980); State v. Maloney, 464 P.2d 793 (Ariz. 1970); Vasil v. State, 373

So.2d 465 (Fla. 1979); Coleman v. State, 378 So.2d 640 (Miss. 1979); State v. Stewart, 250 N.W.2d 849 (Neb. 1977); Commonwealth v. Green, 151 A.2d 241 (Pa. 1959). Cf. People v. Wilkins, 344 N.E.2d 724 (Ill. 1976) (court reduces murder sentence); People v. Hiemel, 372 N.Y.S.2d 730 (1975) (same); People v. Martinson, 312 N.Y.S.2d 281 (1970) (same); Ezell v. State, 489 P.2d 781 (Okla.Cr.App. 1971) (same); Fryrear v. Commonwealth, 507 S.W.2d 144 (Ky. 1974) (life sentence without parole is cruel and unusual punishment when applied to a juvenile).

On the other hand, there are over 60 juveniles on death row, and the state courts have upheld the death sentences of several of these juveniles. See High v. State, 276 S.E.2d 5 (Ga. 1981); State v. Prejean, 379 So.2d 240 (La. 1979); State v. Shaw, 255 S.E.2d 799 (1979); State v. Valencia, 602 P.2d 807 (1979).

60 on
death
row

6. Juvenile Court Systems

The establishment of juvenile court systems and the Federal Youth Corrections Act--which applies to youths of ages 16-22--indicate a recognition that juvenile criminals are not mature adults and should not be punished as if they were. Yet having said this, we must recognize that the states do treat the juvenile violent offender--particularly the juvenile murderer--as a special case. By permitting the criminal

Yes

courts to assume concurrent jurisdiction over violent juvenile offenders, the states appear to place a limit on their solicitude for the juvenile offender.

7. Academic and Professional Commentary

On the whole the academic and professional commentary appears to condemn the execution of children. Expressions of outrage are easy to come by. Thus, a 1962 New York Times article, reports that "[t]he right to inflict death on youngsters drew sharp condemnation at a recent University of Chicago conference on "Justice for the Child." More than seventy of the nation's leading juvenile court jurists, attorneys, probation officers, educators, welfare and social workers at a seminar expressed outrage 'that any state retains the power to execute a minor.'"

On the other hand, there is a recognition in the literature that the problem of "violent juvenile offenders" has become increasingly serious. Thus, according to figures assembled by the National Advisory Committee of Criminal Justice in a 1976 report, youths of 17 years of age and under account for 1/3 of all felony arrests; in the cities they account for nearly 1/2 of all felony arrests. They account for 10% of homicide arrests, 19.4% of rape offenses, and 55% of auto thefts. From 1960 to 1974 there has been a 241.4% increase in the number of male violent crime offenders under

Juvenile
Crime

One third
of
all
felony
arrests
&
10% of
homicide
arrests

the age of 18 and a 419.2 % increase of female offenders in the same age group. The Report notes that that "there has been a marked increase in rates of violent crimes by juveniles. Evidence also indicates that a large number of juveniles appear to be chronic law violators. There seems to be every indication that a small segment of the juvenile population is responsible for a highly disproportionate number of the delinquent acts committed by juveniles. This is especially true for delinquent acts of a serious nature. The juvenile justice system is, at present, not adequately equipped to deal with the growing tide of youthful violence or with the violent or repeated offender." Juvenile Justice and Delinquency Prevention, Report of the Task Force on Juvenile Justice and Delinquency Prevention, National Advisory Committee on Criminal Justice Standards and Goals, 1976, page 13.

Report

The Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders recognizes the problem of the youthful violent offender and offers the following guidance on sentencing:

"Crimes against the person test the limits of a separate social policy toward youth crime in the criminal court. The Task Force is unanimous in suggesting that the maximum sentencing options be significantly lower for violent young offenders than those for adults convicted of comparable crimes.... The Task Force is divided on the question of whether offenders under twenty-one should ever be subject to sentences of over five years for any crime short of murder."16 "Murder remains the hardest of the hard cases. The young offender who dominates or commits

Murder
by
juveniles

an intentional killing is the ultimate test of the limits of diminished responsibility. The Task Force agreed that maximum sanctions for young offenders should be lower than those for adults. The principle of diminished responsibility makes life imprisonment and death penalties inappropriate in such cases." The Task Force recommends that sentences of over five years for offenders under eighteen convicted of murder and sentences exceeding ten years for offenders between eighteen and twenty-one be confined to cases where the offender is responsible for taking more than one life or has a substantial history of life-threatening violent offenses." page 17.

*Silly
line
drawing*

Confronting Youth Crime, Report of the Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders (1978) (includes background paper by Franklin E. Zimring)

But while the academics and professionals seem to agree that juveniles should not be put to death, they are less able to agree on the age at which this prohibition should be set. Thus, the Standard Juvenile Court Law of 1959, a piece of model criminal legislation prepared by the National Council on Crime and Delinquency, sets the childhood line at under 16. The Twentieth Century Fund Task Force sets the line at age 21 although cautioning that "[t]he Task Force is convinced that no single age during mid-adolescence should be used as a sharp dividing line for sentencing policies." This sentiment is echoed in the background paper by Frederick Zimring, law professor at Chicago: "it is clear that any system that uses a simple 'magic birthday' to determine the boundary of youth for purposes of criminal justice policy is arbitrary and in sharp contrast to the insights of developmental psychology and

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common sense." p.32. Eighteen is the age picked by the International Covenant on Civil and Political Rights, see below, and eighteen seems to be the line drawn in establishing juvenile court jurisdiction in most states.

8. International Treaty

Article 6 of the Covenant on Civil and Political Rights does not abolish capital punishment but it does forbid the death penalty for youths under 18 and for pregnant women. The American Convention on Human Rights similarly forbids the capital punishment of offenders who were under the age of 18 at the time of the crime. According to Eddings 73 countries set a limit on capital punishment at age 18, while virtually all of the Western and Eastern European countries either prohibit capital punishment entirely or draw a line at age 18. There does seem to be an overwhelming consensus among the civilized and not so civilized nations that the execution of persons under the age of 18 is abhorrent.

Yet the cogency of this evidence of international feeling is undercut by the fact that the United States has yet to sign either of the treaties listed above. Indeed, when President Carter sent the Covenant on Civil and Political Rights to the Congress for ratification he proposed that the Covenant be ratified with a reservation to Article 6 that

73 countries

But U.S. not a party

would preserve the right of the United States to impose capital punishment on any person--including juveniles.

9. Conclusion

I reluctantly conclude from the above that there is no consensus in this country against the capital punishment of juveniles under the age of 18. Although the punishment has been meted out to juveniles only infrequently, there are over 60 juveniles now on death row. Despite the Model Penal Code and the academic literature, the majority of states permitting capital punishment also permit its imposition on juveniles, listing youth only as a mitigating factor. The latest federal death bill similarly treats youth as a mitigating factor but not as an absolute bar. The problem of the juvenile violent offender is receiving increasing public attention, and my impression is that, if anything, the public favors harsher treatment of juvenile public offenders. See New York Juvenile Justice Reform Act of 1978, Ch. 481, 1978 N.Y. Laws §48 (13, 14, and 15 year old violent offenders to be treated as adults).

I think you could write a principled opinion that contemporary standards condemn the imposition of capital punishment on juveniles. But you would be placing the Court in a leadership role and somewhat in advance of public opinion in this country. Given that the execution of juveniles is a

rare event and that all states consider youth to be a mitigating factor, it may not be necessary for the Court to get involved in this debate. Moreover, the creation of a per se rule in this area would have some problems of its own. Although 18 is the obvious age to pick in light of current juvenile court statutes, voting laws, etc., it is not clear from current psychological or sociological literature that 18 is a developmental watershed. As you noted in dissent in Fare v. Michael Co., 442 U.S. 707 (1979):

"Minors who become embroiled with the law range from the very young up to those on the brink of majority. Some of the older minors become fully 'street-wise,' hardened criminals, deserving no greater consideration than that properly accorded all persons suspected of crime. Other minors are more of a child than an adult. As the Court indicted in In re Gault... the facts relevant to the care to be exercised in a particular case vary widely. "

*quoting
me
again!*

Finally, the choice of any age is going to lead to peculiar cases--the youth who is 18 and a day at the time of the crime.

Given all of the above and the deference that the Court desires to give the states in matters dealing with sentencing, I cannot recommend that the Court establish a per se rule against the imposition of the death penalty on juveniles under the age of 18 at the time of the offense.

On the other hand, I would not recommend that the Court write an opinion which states that the execution of juveniles is not prohibited by the eighth amendment. I fear that such an opinion would not be understood to be merely

I agree

descriptive of contemporary standards, but would be seen as an endorsement of these standards. I think that the Court should not expend its moral capital in this way, particularly when it is unnecessary to do so and when the effect of the Court's decision may be to retard a movement to a more civilized standard. In short, I suggest that the Court should not reach the eighth amendment question it took the case to decide.

We need not reach the quest. of a per se rule

B. Youth as a Mitigating Circumstance

Should the court reject the eighth amendment per se argument, Eddings argues that the sentence must yet be overturned. He argues first that the sentence is disproportionate and excessive in violation of the eighth amendment, and second he argues that the lower courts erred by refusing to consider his violent family background and emotional instability as mitigating circumstances.

Eddings quite properly argues that the balance of aggravating and mitigating factors in this case would seem to tip toward leniency. The courts below found three aggravating circumstances. The first was that Eddings had killed a police officer. There is no question but that this was an aggravating circumstance. The other two are far more questionable. On the basis of Eddings' two threatening statements to the officers while in custody, and on the basis of his one juvenile assault, which according to Eddings'

yes

probation officer was in the nature of a street fight, the trial court found that Eddings would "constitute a continuing threat to society." On the basis that Eddings did not want to be returned to his home in Missouri, the court found that the murder was "committed for the purpose of avoiding or preventing a lawful arrest or prosecution." Presumably this aggravating circumstance was designed to catch fleeing criminals, not someone running away from home. ?
Yes

And if the aggravating factors are weak, boiling down to the killing of a police officer, the mitigating factor of youth is strong. To say the least, Eddings was an immature and emotionally disturbed teenager. The crime and its background verily proclaim the youthfulness of the offender.

Even so, and despite the strength of Eddings' argument that the mitigating factors outweigh the aggravating, I think it would be difficult for the Court to find the sentence to be "grossly disproportionate" in this case without adopting a per se rule, or strong presumption, against the capital punishment of a juvenile. Eddings killed a policeman without any provocation. To find the death penalty "grossly disproportionate" in this case, when the Court has found the death penalty to be a proper sanction in the case of first degree murder, would be the equivalent of establishing a per se rule against the capital punishment of juveniles. But as I have suggested above, I do not think that contemporary standards in this country forbid the capital punishment of
need not make a finding as to gross disproportionality

23.
juveniles. Moreover, to find the sentence disproportionate in this case, because in this case the mitigating factors outweigh the aggravating, would involve the Court in policing particular impositions of the death penalty in a way that it has sought to avoid.

On the other hand, I think Eddings has a very strong argument that when the lower courts refused to consider his unhappy family circumstances and his emotional instability they violated decisions of this Court in Bell v. Ohio, 438 U.S. 637 (1978); Roberts v. Louisiana, 431 U.S. 633 (1977); Lockett v. Ohio, 438 U.S. 586 (1978); and Woodson v. North Carolina, 428 U.S. 280 (1976). In all of these cases, the Court insists that the sentencing judge must consider "any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." 438 U.S. at 604. Here the courts appeared to confuse excuses that absolve one of any criminal liability with excuses that merely soften the sentence. Thus the trial held that he could not "consider the fact of this young man's violent background." The appellate court reiterated this judgment:

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good*

The petitioner also argues his mental state at the time of the murder. He stresses his family history in saying he was suffering from severe psychological and emotional disorders, and that the killing was in actuality an inevitable product of the way he was raised. There is no doubt that the petitioner has a personality disorder. But all the evidence tends to show that he knew the difference between right and wrong at the time he pulled the

20.
trigger, and that is the test of criminal responsibility in this State. ... For the same reason the petitioner's family history is useful in explaining why he behaved the way he did, but it does not excuse his behavior.

As we have discussed, the factors of a broken home, of a violent father, and of emotional disturbance may not add up to much in the case of a middle aged criminal. But when the offender is 16--and immature for his years at that--these mitigating factors are important. In a sense, by ignoring such factors as these the courts below did not really consider youth to be a mitigating factor. The courts considered age, but not the condition of being young.

The one problem with this basis for decision is that Eddings makes the argument now for the first time. But given that this is a capital case, I believe that resort to the plain error rule would be justified. Thus, without reaching the question of disproportionality, or the question of a per se rule, the Court may remand for resentencing in light of Lockett. On remand the courts below should consider all mitigating circumstances. The Court may have reason to hope that on a remand the courts below will not see fit to set the same penalty--the aggravating circumstances are weak, and the sentence may well come out differently on a second look. Of course if Eddings is re-sentenced to death the Court may then have to consider whether to impose a per se rule or find the punishment disproportional on the facts of the case.

*We
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rely on
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error
rule*

III. Conclusion

1. Although the question is not free from doubt, contemporary standards in this country do not condemn the execution of juveniles convicted of first degree murder.

2. The punishment of death in a case in which the juvenile offender has murdered a police officer is not "grossly disproportional."

3. Because the courts below would not consider all of the mitigating factors proffered by Eddings--factors that are particularly important when the offender is a juvenile--the sentence should be vacated and the matter remanded for re-sentencing in light of Lockett.

lfp/ss 11/24/81

Rider A, p. 6 (Eddings)

EDD6 SALLY-POW

Under our decision in Godfrey v. Georgia, _____
U.S. _____ (1979), the firing of a single shot - especially
as a spontaneous reaction to the possibility of arrest -
would not be viewed as a "heinous, atrocious and cruel"
murder sufficiently different from any murder to qualify as
an "aggravating" circumstance. But the holdings of the
courts below as to the aggravating circumstances have not
been challenged by Eddings.

CHAMBERS DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-5727

MONTY LEE EDDINGS, PETITIONER *v.* OKLAHOMA

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL
APPEALS OF OKLAHOMA

[November —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

Petitioner Monty Lee Eddings was convicted of first degree murder and sentenced to death. Because this sentence was imposed without "the type of individualized consideration of mitigating factors . . . required by the Eighth and Fourteenth Amendments in capital cases," *Lockett v. Ohio*, 438 U. S. 586, 606 (1978) (opinion of BURGER, C.J.), we reverse.

I

On April 4, 1977, Eddings, a 16 year old youth, and several younger companions ran away from their Missouri homes. They travelled in a car owned by Eddings' brother, and drove without destination or purpose in a southwesterly direction eventually reaching the Oklahoma turnpike. Eddings had in the car a shotgun and several rifles he had taken from his father. After he momentarily lost control of the car, he was signalled to pull over by Officer Crabtree of the Oklahoma Highway Patrol. Eddings did so, and when the Officer approached the car, Eddings stuck a loaded shotgun out of the window and fired, killing the Officer.

Because Eddings was a juvenile, the State moved to have him certified to stand trial as an adult. Finding that there was prosecutive merit to the complaint and that Eddings was not amenable to rehabilitation within the juvenile system, the

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trial court granted the motion. The ruling was affirmed on appeal. *Matter of M.E.*, 584 P. 2d 1340 (Okla. Crim. App. 1978), *cert denied*, 436 U. S. 921 (1978). Eddings was then charged with murder in the first degree, and the District Court of Creek County found him guilty upon his plea of *nolo contendere*.

The Oklahoma death penalty statute provides, in pertinent part:

"Upon conviction . . . of guilt of a defendant of murder in the first degree, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. . . . In the sentencing proceeding, evidence may be presented as to *any mitigating circumstances* or as to any of the aggravating circumstances enumerated in this act." Okla. Stat., Tit. 21, § 701.10 (emphasis added).

Section 701.12 lists seven separate aggravating circumstances; the statute nowhere defines what is meant by "any mitigating circumstances."

At the sentencing hearing, the State alleged three of the aggravating circumstances enumerated in the statute: that the murder was especially heinous, atrocious, or cruel, that the crime was committed for the purpose of avoiding or preventing a lawful arrest, and that there was a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society. Okla. Stat., Tit. 21, § 701.12(4), (5), and (7).

In mitigation, Eddings presented substantial evidence at the hearing of his troubled youth. The testimony of his supervising Juvenile Officer indicated that Eddings had been raised without proper guidance. His parents were divorced when he was five, and until he was 14 Eddings lived with his mother without rules or supervision. App. 109. There is the suggestion that Eddings' mother was an alcoholic and possibly a prostitute. App. 110-111. By the time Eddings

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was 14 he no longer could be controlled, and his mother sent him to live with his father. But neither could the father control the boy. Attempts to reason and talk gave way to physical punishment. The Juvenile Officer testified that Eddings was frightened and bitter, that his father overreacted and used excessive physical punishment: "Mr. Eddings found the only thing that he thought was effectful with the boy was actual punishment, or physical violence—hitting with a strap or something like this."¹ App. 121.

Testimony from other witnesses indicated that Eddings was emotionally disturbed in general and at the time of the crime, and that his mental and emotional development were at a level several years below his age. App. 134, 149, and 173. A state psychologist stated that Eddings had a sociopathic or anti-social personality and that 30% of youths suffering from such a disorder grew out of it as they aged. App. 137 and 139. A sociologist specializing in juvenile offenders testified that Eddings was treatable. App. 149. A psychiatrist testified that Eddings could be rehabilitated by intensive therapy over a 15 to 20 year period. App. 181. He testified further that Eddings "did pull the trigger, he did kill someone, but I don't even think he knew that he was doing it."² The psychiatrist suggested that, if treated, Eddings would no longer pose a serious threat to society. App. 180-181.

¹There was evidence that immediately after the shooting Eddings said "I would rather have shot an Officer than go back to where I live." App. 121.

²The psychiatrist suggested that, at the time of the murder, Eddings was in his own mind shooting his stepfather—a policeman who had been married to his mother for a brief period when Eddings was seven. The psychiatrist stated "I think that given the circumstances and the facts of his life, and the facts of his arrested development, he acted as a seven year old seeking revenge and rebellion; and the act—he did pull the trigger, he did kill someone, but I don't even think he knew that he was doing it." App. 172.

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At the conclusion of all the evidence, the trial judge weighed the evidence of aggravating and mitigating circumstances. He found that the State had proved each of the three alleged aggravating circumstances beyond a reasonable doubt.³ Turning to the evidence of mitigating circumstances, the judge found that Eddings' youth was a mitigating factor of great weight: "I have given very serious consideration to the youth of the Defendant when this particular crime was committed. Should I fail to do this, I think I would not be carrying out my duty." App. 188-189. But he would not consider in mitigation the circumstances of Eddings' unhappy upbringing and emotional disturbance: "... the Court cannot be persuaded entirely by the . . . fact that the youth was 16 years old when this heinous crime was committed. *Nor can the Court in following the law, in my opinion, consider the fact of this young man's violent background.*" App. 189 (emphasis added). Finding that the only mitigating circumstance was Eddings' youth and finding further that this circumstance could not outweigh the aggravating circumstances present, the judge sentenced Eddings to death.

³The trial judge found first that the crime was "heinous, atrocious, and cruel" because "designed to inflict a high degree of pain . . . in utter indifference to the rights of Patrolman Crabtree." App. 187. Second, the judge found that the crime was "committed for the purpose of avoiding or preventing a lawful arrest or prosecution." App. 187-188. The evidence was sufficient to indicate that at the time of the offense Eddings did not wish to be returned to Missouri and that in stopping the car the Officer's intent was to make a lawful arrest. Finally, there was evidence that at one point on the day of the murder after Eddings had been taken to the county jail he told to two officer that "if he was loose that he would shoot" them all. App. 77. There was also evidence that at another time, when an Officer refused to turn off the light in Eddings' cell, Eddings became angry and threatened the Officer: "Now I have shot one of you people, and I'll get you too if you don't turn this light out." App. 103. Based on these two "spontaneous utterances," app. 188, the trial judge found a strong likelihood that Eddings would again commit a criminal act of violence if released.

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The Court of Criminal Appeals affirmed the sentence of death. *Eddings v. State*, 616 P. 2d 1159 (Okla. Crim. App. 1980). It found that each of the aggravating circumstances alleged by the State had been present.⁴ It recited the mitigating evidence presented by Eddings in some detail, but in the end it agreed with the trial court that only the fact of Eddings' youth was properly considered as a mitigating circumstance:

"[Eddings] also argues his mental state at the time of the murder. He stresses his family history in saying he was suffering from severe psychological and emotional disorders, and that the killing was in actuality an inevitable product of the way he was raised. There is no doubt that the petitioner has a personality disorder. But all the evidence tends to show that he knew the difference between right and wrong at the time he pulled the trigger, and that is the test of criminal responsibility in this State. [citation] For the same reason, the petitioner's family history is useful in explaining why he behaved the way he did, but it does not excuse his behavior." *Id.*, at 1170.

II

In *Lockett v. Ohio*, 438 U. S. 586 (1978), CHIEF JUSTICE BURGER, writing for the plurality, stated the rule that we apply today:⁵

⁴We understand the Court of Criminal Appeals to hold that the murder of a police officer in the performance of his duties is "heinous, atrocious, and cruel" under the Oklahoma statute. See *Roberts v. Louisiana*, 431 U. S. 683, 686 (1977). However, we doubt that the trial judge's understanding and application of this aggravating circumstance conformed to that degree of certainty required by our decision in *Godfrey v. Georgia*, 446 U. S. 420 (1980). See n. 3, *supra*.

⁵Because we decide this case on the basis of *Lockett v. Ohio*, 438 U. S. 586 (1978), we do not reach the question of whether—in light of contempo-

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"[W]e conclude that the Eighth and Fourteenth Amendments require that the sentencer . . . not be precluded from considering, as a *mitigating factor*, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." *Id.*, at 604 (emphasis in original).

Recognizing "that the imposition of death by public authority is . . . profoundly different from all other penalties," the plurality held that the sentencer must be free to give "independent mitigating weight to aspects of the defendant's character and record and to circumstances of the offense proffered in mitigation. . . ." *Id.*, at 605. Because the Ohio death penalty statute only permitted consideration of three mitigating circumstances, the Court found the statute to be invalid.

As THE CHIEF JUSTICE explained, the rule in *Lockett* is the product of a considerable history reflecting the law's effort to develop a system of capital punishment at once consistent and principled but also humane and sensible to the uniqueness of the individual. Since the early days of the common law, the legal system has struggled to accommodate these twin objectives. Thus, the common law began by treating all criminal homicides as capital offenses, with a mandatory sentence of death. Later it allowed exceptions, first through an exclusion for those entitled to claim benefit of clergy and then by limiting capital punishment to murders upon "malice prepensed." In this country we attempted to soften the rigor of the system of mandatory death sentences we inherited from England, first by grading murder into different degrees of which only murder of the first degree was a capital offense and then by committing use of the death penalty to the absolute discretion of the jury. By the time of

rary standards—the eighth amendment forbids the execution of a defendant who was 16 at the time of the offense.

our decision in *Furman v. Georgia*, 408 U. S. 238 (1972), the country had moved so far from a mandatory system that the imposition of capital punishment frequently become arbitrary and capricious.

Beginning with *Furman*, the Court has attempted to provide standards for a constitutional death penalty that would serve both goals of measured, consistent application and fairness to the accused. Thus, in *Gregg v. Georgia*, 428 U. S. 153 (1976), the plurality held that the danger of an arbitrary and capricious death penalty could be met "by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance." *Id.*, at 195. By its requirement that the jury find one of the aggravating circumstances listed in the death penalty statute, and by its direction to the jury to consider "any mitigating circumstances," the Georgia statute properly confined and directed the jury's attention to the circumstances of the particular crime and to "the characteristics of the person who committed the crime. . . ." *Id.*, at 197.⁶

Similarly, in *Woodson v. North Carolina*, 428 U. S. 280 (1976), the plurality held that mandatory death sentencing was not a permissible response to the problem of arbitrary jury discretion. As the history of capital punishment had shown, such an approach to the problem of discretion could not succeed while the Eighth Amendment required that the individual be given his due: "the fundamental respect for humanity underlying the Eighth Amendment . . . requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting

⁶"[T]he jury's attention is directed to the characteristics of the person who committed the crime: . . . Are there any special facts about this defendant that mitigate against imposing capital punishment (*e. g.*, his youth, the extent of his cooperation with the police, his emotional state at the time of the crime)." 428 U. S., at 197.

the penalty of death." *Id.*, at 304.⁷ See *Roberts (Harry) v. Louisiana*, 431 U. S. 633 (1977); *Roberts (Stanislaus) v. Louisiana*, 428 U. S. 325 (1976).

Thus, the rule in *Lockett* followed from the earlier decisions of the Court and from the Court's insistence that capital punishment be imposed fairly, and with reasonable consistency, or not at all. By requiring that the sentencer be permitted to focus "on the characteristics of the person who committed the crime," *Gregg v. Georgia*, 428 U. S., at 197, the rule in *Lockett* recognizes that "justice . . . requires . . . that there be taken into account the circumstances of the offense together with the character and propensities of the offender." *Pennsylvania v. Ashe*, 302 U. S. 51, 55 (1937). By holding that the sentencer in capital cases must be permitted to consider any relevant mitigating factor, the rule in *Lockett* recognizes that a consistency produced by ignoring individual differences is a false consistency.

III

We now apply the rule in *Lockett* to the circumstances of this case. The trial judge stated that "in following the law," he could not "consider the fact of this young man's violent background." There is no dispute that by "violent background" the trial judge was referring to the mitigating evidence of Eddings' family history.⁸ From this statement it is

⁷"A process that accords no significance to relevant facets of the character and record of the individual offender or the circumstances of the particular offense excludes from consideration in fixing the ultimate punishment of death the possibility of compassionate or mitigating factors stemming from the diverse frailties of humankind. It treats all persons convicted of a designated offense not as uniquely individual human beings. . . ." 428 U. S., at 304.

⁸Brief for Respondent 55 ("the inference that can be drawn is that the court did not consider petitioner's juvenile record and family life to be a mitigating circumstance"); Tr. of Oral Arg. 36 ("the trial court did not consider the fact of his family background as a mitigating circumstance. . . .

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clear that the trial judge did not evaluate the evidence in mitigation and find it wanting as a matter of fact, rather he found that *as a matter of law* he was unable even to consider the evidence.

The Court of Criminal Appeals took the same approach. It found that the evidence in mitigation was not relevant because it did not tend to provide a legal excuse from criminal responsibility. Thus the court conceded that Eddings had a "personality disorder," but cast this evidence aside on the basis that "he knew the difference between right and wrong . . . and that is the test of criminal responsibility." Similarly, the evidence of Eddings' family history was "useful in explaining" his behavior, but it did not "excuse" the behavior. From these statements it appears that the Court of Criminal Appeals also considered only that evidence to be mitigating which would tend to support a legal excuse from criminal liability.

We find that the limitations placed by these courts upon the mitigating evidence they would consider violated the rule in *Lockett*.⁹ Just as the state may not by statute preclude

the violent background, which I assume he meant was . . . [that Eddings] was subject to some slapping around and some beating by his father." (argument of respondent).

⁹ Eddings argued to the Court of Criminal Appeals that imposition of the death penalty in the particular circumstances of his case, and in light of the mitigating factors present, was excessive punishment under the Eighth Amendment. But he did not specifically argue that the trial judge erred in refusing to consider relevant mitigating circumstances in the process of sentencing. In rejecting his claim of excessive punishment, the court examined the aggravating and mitigating circumstances and held that Eddings' family history and emotional disorder were *not* mitigating circumstances that ought to be weighed in the balance. Thus, the court's holding that these factors were irrelevant to an inquiry into excessiveness was also a holding that they need not have been considered by the sentencer in imposing capital punishment. Similarly, Eddings' argument in his petition for certiorari that imposition of the death penalty was excessive on the facts of this case comprises the argument that the sentencer erred in refus-

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the sentencer from considering any mitigating factor, neither may the sentencer, refuse to consider, *as a matter of law*, any relevant mitigating evidence. In this instance, it was as if the trial judge had instructed a jury to disregard the mitigating evidence Eddings proffered on his behalf. The sentencer, and the Court of Criminal Appeals on review, may determine the weight to be given relevant mitigating evidence. But they may not give it no weight by excluding such evidence from their consideration.¹⁰

Nor do we doubt that the evidence Eddings offered was relevant mitigating evidence. Eddings was a youth of 16 years at the time of the murder. Evidence of a difficult family history and of emotional disturbance is typically introduced by defendants in mitigation. See *McGautha v. California*, 402 U. S. 183, 187-188 and 193 (1971). In some cases, such evidence properly may be given little weight. But when the defendant was 16 years old at the time of the

ing to consider relevant mitigating circumstances proffered by him at the sentencing hearing. In short, although neither the opinion of the Court of Appeals nor Eddings' petition for certiorari spoke to our decision in *Lockett* by name, the question of whether the decisions below were consistent with our decision in *Lockett* is properly before us. Our jurisdiction does not depend on citation to book and verse. See, e. g., *New York ex rel. Bryant v. Zimmerman*, 278 U. S. 60, 67 (1928).

Moreover, Eddings specifically raised the argument upon *Lockett* in his state petition for rehearing. See Petition for Re-Hearing and Supporting Brief, Proposition III, at 10. The Court of Criminal Appeals denied the petition, stating that it had given it full consideration and had been "fully advised in the premises." See Rule 1.18, Rules of the Court of Criminal Appeals (court will entertain new arguments upon a petition for rehearing). Cf. *Cox v. Cohn*, 420 U. S. 469, 476 (1975). See also *Wood v. Georgia*, — U. S. —, — n. 5 (1981); *Beck v. Alabama*, 447 U. S. 625, 631 n. 6 (1980); *Vachon v. New Hampshire*, 414 U. S. 478, 479 n. 3 (1974).

¹⁰We note that the Oklahoma death penalty statute permits the defendant to present evidence "as to any mitigating circumstance." Okla. Stat., Tit. 21, § 701.10. We require the sentencer to listen.

offense there can be no doubt that evidence of a turbulent family history, of beatings by a harsh father, and of severe emotional disturbance is of the utmost relevance and importance.

The trial judge recognized that youth must be considered a relevant mitigating factor. But youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage.¹¹ Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults.¹² Particularly, "during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment" expected of adults. *Bellotti v. Baird*, 443 U. S. 622, 635 (1979).

Even the normal 16-year old customarily lacks the maturity of an adult. In this case, Eddings was not a normal 16-year old; he had been deprived of the care, concern and pater-

¹¹ "Adolescents everywhere, from every walk of life, are often dangerous to themselves and to others." The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, 41 (1967). "[A]dolescents, particularly in the early and middle teen years, are more vulnerable, more impulsive, and less self-disciplined than adults. Crimes committed by youths may be just as harmful to victims as those committed by older persons, but they deserve less punishment because adolescents may have less capacity to control their conduct and to think in long-range terms than adults. Moreover, youth crime as such is not exclusively the offender's fault; offenses by the young also represent a failure of family, school, and the social system, which share responsibility for the development of America's youth." Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, *Confronting Youth Crime*, 7 (1978).

¹² As Justice Frankfurter stated, "[c]hildren have a very special place in life which law should reflect." *May v. Anderson*, 345 U. S. 528, 536 (1953) (Frankfurter, J., concurring). And indeed the law does reflect this special place. Every state in the country makes some separate provision for juvenile offenders. See *In re Gault*, 387 U. S. 1, 14 (1967).

80-5727—OPINION

12

EDDINGS v. OKLAHOMA

nal attention that children deserve. On the contrary, he was a juvenile with severe emotional problems, and had been raised in a neglectful, sometimes even violent, family background. In addition, there was testimony that Eddings' mental and emotional development were at a level several years below his chronological age. All of this does not suggest an absence of responsibility for the crime of murder, deliberately committed in this case.¹¹ Rather, it is to say that just as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be given the closest attention in sentencing.

On remand, the state courts must consider this evidence and weigh it against the evidence of the aggravating circumstances. We do not weigh the evidence for them. We require only that they consider all of the relevant evidence proffered by Eddings in mitigation.

Accordingly, the judgment is reversed to the extent that it sustains the imposition of the death penalty, and the case is remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.

¹¹ We are not unaware of the extent to which minors engage increasingly in violent crime. See, e. g., National Advisory Committee on Criminal Justice Standards and Goals, Juvenile Justice and Delinquency Prevention, Report of the Task Force on Juvenile Justice and Delinquency Prevention, 3 (1976). Nor do we suggest an absence of legal responsibility. We are concerned here with the severity of the ultimate penalty: the death sentence imposed for the crime of murder by an emotionally disturbed youth with a disturbed child's immaturity.

dfl 11/24/81

To: Justice Powell

From: David

Re: Eddings--No. 80-5727

John has been through this draft carefully.

✓ Footnote 1 is entirely new. Old footnote 6 has become footnote 8 and has been largely re-written in accord with John's suggestions.

You might take a look at these two footnotes. Otherwise it is as you saw it before.

If you think the draft is ready, I will send it to the printers. If it would speed things along, I could have the printer type it up as a first draft but wait to circulate until the others have had a chance to go through it.

Add fn on app. Circ
Add fn on state law
"May not be"

David - see
questions or minor
changes:

5
8 10
13
14
15
17 16

Reviewed 11/24
Ready for
Chambers Draft
L.F.P.

df1 11/24/81

Draft: No. 80-5727, Eddings v. Oklahoma

JUSTICE POWELL delivered the opinion of the Court.

Petitioner Monty Lee Eddings was convicted of first degree murder and sentenced to death. Because this sentence was imposed without "the type of individualized consideration of mitigating factors ... required by the Eighth and Fourteenth Amendments in capital cases,"

I

On April 4, 1977, Eddings, a 16 year old youth, and several younger companions ran away from their Missouri homes. They travelled in a car owned by Eddings' brother, and drove without destination or purpose in a southwesterly direction eventually reaching the Oklahoma turnpike. Eddings had in the car a shotgun and several rifles he had taken from his father. After he momentarily lost control of the car, he was signalled to pull over by Officer Crabtree of the Oklahoma Highway Patrol. Eddings did so, and when the Officer approached the car, Eddings stuck a loaded shotgun out of the window and fired, killing the Officer.

Because Eddings was a juvenile, the State moved to have him certified to stand trial as an adult. Finding that there was prosecutive merit to the complaint and that Eddings was not amenable to rehabilitation within the juvenile system, the trial court granted the motion. The

(1978). Eddings was then charged with murder in the first degree, and the District Court of Creek County found him guilty upon his plea of nolo contendere.

The Oklahoma death penalty statute provides, in pertinent part:

"Upon conviction ... of guilt of a defendant of murder in the first degree, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. ... In the sentencing proceeding, evidence may be presented as to any mitigating circumstances or as to any of the aggravating circumstances enumerated in this act." Okla. Stat., Tit. 21, § 701.10 (emphasis added).

Section 701.12 lists seven separate aggravating circumstances; the statute nowhere defines what is meant by "any mitigating circumstances."

At the sentencing hearing, the State alleged three of the aggravating circumstances enumerated in the statute: that the murder was especially heinous, atrocious, or cruel, that the crime was committed for the purpose of avoiding or preventing a lawful arrest, and that there was a probability that the defendant would

701.12(4), (5), and (7).

In mitigation, Eddings presented substantial evidence at the hearing of his troubled youth. The testimony of his supervising Juvenile Officer indicated that Eddings had been raised without proper guidance. His parents were divorced when he was five, and until he was fourteen Eddings lived with his mother without rules or supervision. App. 109. There is the suggestion that Eddings' mother was an alcoholic and possibly a prostitute. App. 110-111. By the time Eddings was fourteen he no longer could be controlled, and his mother sent him to live with his father. But neither could the father control the boy. Attempts to reason and talk gave way to physical punishment. The Juvenile Officer testified that Eddings was frightened and bitter, that his father overreacted and used excessive physical punishment: "Mr. Eddings found the only thing that he thought was effectful with the boy was actual punishment, or physical violence--hitting with a strap or something like this."1

*Dark - two adverse
back to back
seems a bit odd
- at least
in this context*

App. 121.

Testimony from other witnesses indicated that Eddings was ~~seriously~~ emotionally disturbed in general and at the time of the crime, and that his mental and emotional development were at a level several years below his age. App. 134, 149, and 173. A state psychologist stated that Eddings had a sociopathic or anti-social personality and that 30% of youths suffering from such a disorder grew out of it as they aged. App. 137 and 139. A sociologist specializing in juvenile offenders testified that Eddings was treatable. App. 149. A psychiatrist testified that Eddings could be rehabilitated by intensive therapy over a 15 to 20 year period. App. 181. He testified further that Eddings was "disassociating" at the time of the murder, and that "he did pull the trigger, he did kill someone, but I don't even think he knew that he was doing it." ^{ed} 2 The psychiatrist suggested that, if

than go back to where I live." App. 121.

treated, Eddings would no longer pose a serious threat to society. App. 180-181.

At the conclusion of all the evidence, the trial judge weighed the evidence of aggravating and mitigating circumstances. He found that the State had proved each of the three alleged aggravating circumstances beyond a reasonable doubt.³ Turning to the evidence of mitigating circumstances, the judge found that Eddings' youth was a mitigating factor of great weight: "I have given very serious consideration to the youth of the Defendant when

development, he acted as a seven year old seeking revenge and rebellion; and the act--he did pull the trigger, he did kill someone, but I don't even think he knew that he was doing it." App. 172.

³The trial judge found first that the crime was "heinous, atrocious, and cruel" because "designed to inflict a high degree of pain ... in utter indifference to the rights of Patrolman Crabtree." App. 187. Second, the judge found that the crime was "committed for the purpose of avoiding or preventing a lawful arrest or prosecution." App. 187-188. The evidence was sufficient to indicate that at the time of the offense Eddings did not wish to be returned to Missouri and that in stopping the car the Officer's intent was to make a lawful arrest. Finally, there was evidence that at one point on the day of the murder after Eddings had been taken to the county jail he told to two officer that "if he was loose that he would shoot" them all. App. 77. There was also evidence that at another time, when an Officer refused to turn off the light in Eddings' cell, Eddings became angry and threatened the Officer: "Now I have shot one of you people. and I'll get you too if you don't turn this light

this particular crime was committed. Should I fail to do this, I think I would not be carrying out my duty." App. 188-189. But he would not consider in mitigation the circumstances of Eddings' unhappy upbringing and emotional disturbance: " ... the Court cannot be persuaded entirely by the ... fact that the youth was sixteen years old when this heinous crime was committed. Nor can the Court in following the law, in my opinion, consider the fact of this young man's violent background." App. 189 (emphasis added). Finding that the only mitigating circumstance was Eddings' youth and finding further that this circumstance could not outweigh the aggravating circumstances present, the judge sentenced Eddings to death.

The Court of Criminal Appeals affirmed the sentence of death. Eddings v. State, 616 P. 2d 1159 (Okla. Crim. App. 1980). It found that each of the aggravating circumstances alleged by the State had been present. ⁴ It recited the mitigating evidence presented by Eddings in some detail, but in the end it agreed with the

"[Eddings] also argues his mental state at the time of the murder. He stresses his family history in saying he was suffering from severe psychological and emotional disorders, and that the killing was in actuality an inevitable product of the way he was raised. There is no doubt that the petitioner has a personality disorder. But all the evidence tends to show that he knew the difference between right and wrong at the time he pulled the trigger, and that is the test of criminal responsibility in this State. [citation] For the same reason, the petitioner's family history is useful in explaining why he behaved the way he did, but it does not excuse his behavior." Id., at 1170.

II

In Lockett v. Ohio, 438 U.S. 586 (1978), CHIEF

JUSTICE BURGER, writing for the plurality, stated the rule

that
which we apply today: ⁵

"[W]e conclude that the Eighth and Fourteenth Amendments require that the sentencer ... not be precluded from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." Id., at 604 (emphasis in original).

Recognizing "that the imposition of death by public authority is ... profoundly different from all other penalties," the plurality held that the sentencer must be free to give "independent mitigating weight to aspects of the defendant's character and record and to circumstances

of the offense proffered in mitigation" *Id.*, at 605. Because the Ohio death penalty statute only permitted consideration of three mitigating circumstances, the Court found the statute to be invalid.

As THE CHIEF JUSTICE explained, the rule in Lockett is the product of a considerable history reflecting the law's effort to develop a system of capital punishment at once consistent and principled but also humane and sensible to the uniqueness of the individual. Since the early days of the common law, the legal system has struggled to accommodate these twin objectives. Thus, the common law began by treating all criminal homicides as capital offenses, with a mandatory sentence of death. Later it allowed exceptions, first through an exclusion for those entitled to claim benefit of clergy and then by limiting capital punishment to murders upon "malice prepensed." In this country we attempted to soften the rigor of the system of mandatory death sentences we inherited from England, first by grading murder into different degrees of

the absolute discretion of the jury. By the time of ^{the}~~our~~ decision in Furman v. Georgia, 408 U.S. 238 (1972), the country had moved so far from a mandatory system that the imposition of capital punishment frequently become arbitrary and capricious.

Beginning with ~~the decision in~~ Furman, the Court has attempted to provide standards for a constitutional death penalty that would serve both goals of measured, consistent application and fairness to the accused. Thus, in Gregg v. Georgia, 428 U.S. 153 (1976), the plurality held that the danger of an arbitrary and capricious death penalty could be met "by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance." Id., at 195. By its requirement that the jury find one of the aggravating circumstances listed in the death penalty statute, and by its direction to the jury to consider "any mitigating circumstances," the Georgia statute properly confined and directed the jury's attention to the circumstances of the

Similarly, in Woodson v. North Carolina, 428 U.S. 280 (1976), the plurality held that mandatory death sentencing was not a permissible response to the problem of arbitrary jury discretion. As the history of capital punishment had shown, such an approach to the problem of discretion could not succeed while the Eighth Amendment required that the individual be given his due: "the fundamental respect for humanity underlying the Eighth Amendment ... requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death." Id., at 304.⁷ See Roberts (Harry) v. Louisiana, 431 U.S. 633 (1977); Roberts (Stanislaus) v. Louisiana, 428 U.S.

⁶ "[T]he jury's attention is directed to the characteristics of the person who committed the crime: ... Are there any special facts about this defendant that mitigate against imposing capital punishment (e.g., his youth, the extent of his cooperation with the police, his emotional state at the time of the crime)." 428 U.S., at 197.

⁷ "A process that accords no significance to relevant facets of the character and record of the individual offender or the circumstances of the particular

Similarly, in Woodson v. North Carolina, 428 U.S. 280 (1976), the plurality held that mandatory death sentencing was not a permissible response to the problem of arbitrary jury discretion. As the history of capital punishment had shown, such an approach to the problem of discretion could not succeed while the Eighth Amendment required that the individual be given his due: "the fundamental respect for humanity underlying the Eighth Amendment ... requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death." Id., at 304.^{7/6} See Roberts (Harry) v. Louisiana, 431 U.S. 633 (1977); Roberts (Stanislaus) v. Louisiana, 428 U.S.

^{6/} "[T]he jury's attention is directed to the characteristics of the person who committed the crime: ... Are there any special facts about this defendant that mitigate against imposing capital punishment (e.g., his youth, the extent of his cooperation with the police, his emotional state at the time of the crime)." 428 U.S., at 197.

^{7/} "A process that accords no significance to relevant facets of the character and record of the individual offender or the circumstances of the particular

325 (1976).

Thus, the rule in Lockett followed from the earlier decisions of the Court and from the Court's insistence that capital punishment be imposed fairly, and with reasonable consistency, or not at all. By requiring that the sentencer be permitted to focus "on the characteristics of the person who committed the crime," Gregg v. Georgia, 428 U.S., at 197, the rule in Lockett recognizes that "justice ... requires ... that there be taken into account the circumstances of the offense together with the character and propensities of the offender." Pennsylvania v. Ashe, 302 U.S. 51, 55 (1937). By holding that the sentencer in capital cases must be permitted to consider any relevant mitigating factor, the rule in Lockett recognizes that a consistency produced by ignoring individual differences is a false consistency.

III

We now apply the rule in Lockett to the

that by "violent background" the trial judge was referring to the mitigating evidence of Eddings' family history. ⁸

From this statement it is clear that the trial judge did not evaluate the evidence in mitigation and find it wanting as a matter of fact, rather he found that as a matter of law he was unable even to consider the evidence.

✓ The Court of Criminal Appeals took the same approach. It found that the evidence in mitigation was not relevant because it did not tend to provide a legal excuse from criminal responsibility. Thus the court conceded that Eddings had a "personality disorder", but cast this evidence aside on the basis that "he knew the difference between right and wrong ... and that is the test of criminal responsibility." Similarly, the evidence of Eddings' family history was "useful in explaining" his behavior, but it did not "excuse" the behavior. From

⁸ Brief for Respondent 55 ("the inference that can be drawn is that the court did not consider petitioner's juvenile record and family life to be a mitigating circumstance"); Tr. of Oral Arg. 36 ("the trial court did not consider the fact of his family background as a

these statements it appears that the Court of Criminal Appeals also considered only that evidence to be mitigating which would tend to support a legal excuse from criminal liability.

We find that the limitations placed by these courts upon the mitigating evidence they would consider violated the rule in Lockett.⁹ Just as the state may not

⁹ Eddings argued to the Court of Criminal Appeals that imposition of the death penalty in the particular circumstances of his case, and in light of the mitigating factors present, was excessive punishment under the Eighth Amendment. But he did not specifically argue that the trial judge erred in refusing to consider relevant mitigating circumstances in the process of sentencing. In rejecting his claim of excessive punishment, the court examined the aggravating and mitigating circumstances and held that Eddings' family history and emotional disorder were not mitigating circumstances that ought to be weighed in the balance. ~~Of necessity,~~ the court's holding that these factors were irrelevant to an inquiry into excessiveness was also a holding that ~~these factors~~ need not have been considered by the sentencer in imposing capital punishment. ~~in the first place.~~ Similarly, Eddings' argument in his petition for certiorari that imposition of the death penalty was excessive on the facts of this case comprises the argument that the sentencer erred in refusing to consider relevant mitigating circumstances proffered by him at the sentencing hearing. In short, although neither the opinion of the Court of Appeals nor Eddings' petition for certiorari spoke to our decision in Lockett by name, the question of whether the decisions below were consistent with our decision in Lockett is properly before us. Our jurisdiction does not depend on citation to book and verse. See, e.g., New York ex rel. Bryant v. Zimmerman, 278 U.S. 60, 67 (1928).

Moreover, Eddings specifically raised the argument upon Lockett in his state petition for rehearing. See Petition for Re-Hearing and Supporting Brief, Proposition III, at 10. The Court of Criminal

Thus, they

by statute preclude the sentencer from considering any mitigating factor, neither may the sentencer, refuse to consider, as a matter of law, any relevant mitigating evidence. In this instance, it was as if the trial judge had instructed a jury to disregard the mitigating evidence

Eddings proffered on his behalf. The sentencer, and the Court of Criminal Appeals on review, may ^{determine the weight to be given} ~~find that~~ relevant mitigating evidence ~~is entitled to little weight~~

But they may not give it no weight by excluding such evidence from their consideration, ⁽²⁾ ~~in the first place~~.

Nor do we doubt that the evidence Eddings offered was relevant mitigating evidence. Eddings was a youth of 16 years at the time of the murder. Evidence of a difficult family history and of emotional disturbance is typically introduced by defendants in mitigation. See McGautha v. California, 402 U.S. 183, 187-188 and 193

(1971). ^{In some cases,} ~~Perhaps typically,~~ such evidence ^{properly may be} ~~is~~ given little

weight. But when the defendant was 16 years old at the

time of the offense there can be ^{no}~~little~~ doubt that evidence of a turbulent family history, of beatings by a harsh father, and of ^{severe} emotional disturbance is of the utmost relevance and importance.

The trial judge recognized that youth must be considered a relevant mitigating factor. But youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. ¹¹ Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults. ^{20 2} Particularly,

11 ¹¹ "Adolescents everywhere, from every walk of life, are often dangerous to themselves and to others." The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, 41 (1967). "[A]dolescents, particularly in the early and middle teen years, are more vulnerable, more impulsive, and less self-disciplined than adults. Crimes committed by youths may be just as harmful to victims as those committed by older persons, but they deserve less punishment because adolescents may have less capacity to control their conduct and to think in long-range terms than adults. Moreover, youth crime as such is not exclusively the offender's fault; offenses by the young also represent a failure of family, school, and the social system, which share responsibility for the development of America's youth." Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders.

"during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment" expected of adults. Bellotti v. Baird, 443 U.S. 622, 635 (1979).

Even the normal 16-year old customarily lacks the maturity of an adult. In this case, Eddings was not a normal 16-year old; he had been deprived of the care, concern and ~~parental~~^{maternal} attention that children deserve. On the contrary, he was a juvenile with severe emotional problems, and had been raised in a neglectful, sometimes even violent, family background. In addition, there was testimony that Eddings' mental and emotional development were at a level several years below his chronological age. All of this does not suggest an absence of responsibility for the crime of murder, deliberately committed in this case.¹³ Rather, it is to say that just as the

place. Every state in the country makes some separate provision for juvenile offenders. See In re Gault, 387 U.S. 1, 14 (1967).

13 ~~11~~ We are not unaware of the extent to which minors

chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be given the closest attention in sentencing.

On remand, the the state courts must consider this evidence and weigh it against the evidence of the aggravating circumstances. We do not weigh the evidence for them. We require only that they consider all of the relevant evidence proffered by Eddings in mitigation.

Accordingly, the judgment is reversed to the extent that it sustains the imposition of the death penalty, and the case is remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: DEC 1 1981

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-5727

MONTY LEE EDDINGS, PETITIONER v. OKLAHOMA

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL
APPEALS OF OKLAHOMA

[November —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

Petitioner Monty Lee Eddings was convicted of first degree murder and sentenced to death. Because this sentence was imposed without "the type of individualized consideration of mitigating factors . . . required by the Eighth and Fourteenth Amendments in capital cases," *Lockett v. Ohio*, 438 U. S. 586, 606 (1978) (opinion of BURGER, C.J.), we reverse.

I

On April 4, 1977, Eddings, a 16 year old youth, and several younger companions ran away from their Missouri homes. They travelled in a car owned by Eddings' brother, and drove without destination or purpose in a southwesterly direction eventually reaching the Oklahoma turnpike. Eddings had in the car a shotgun and several rifles he had taken from his father. After he momentarily lost control of the car, he was signalled to pull over by Officer Crabtree of the Oklahoma Highway Patrol. Eddings did so, and when the Officer approached the car, Eddings stuck a loaded shotgun out of the window and fired, killing the Officer.

Because Eddings was a juvenile, the State moved to have him certified to stand trial as an adult. Finding that there was prosecutive merit to the complaint and that Eddings was not amenable to rehabilitation within the juvenile system, the

trial court granted the motion. The ruling was affirmed on appeal. *Matter of M.E.*, 584 P. 2d 1340 (Okla. Crim. App. 1978), *cert denied*, 436 U. S. 921 (1978). Eddings was then charged with murder in the first degree, and the District Court of Creek County found him guilty upon his plea of *nolo contendere*.

The Oklahoma death penalty statute provides, in pertinent part:

"Upon conviction . . . of guilt of a defendant of murder in the first degree, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. . . . In the sentencing proceeding, evidence may be presented as to *any mitigating circumstances* or as to any of the aggravating circumstances enumerated in this act." Okla. Stat., Tit. 21, § 701.10 (emphasis added).

Section 701.12 lists seven separate aggravating circumstances; the statute nowhere defines what is meant by "any mitigating circumstances."

At the sentencing hearing, the State alleged three of the aggravating circumstances enumerated in the statute: that the murder was especially heinous, atrocious, or cruel, that the crime was committed for the purpose of avoiding or preventing a lawful arrest, and that there was a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society. Okla. Stat., Tit. 21, § 701.12 (4), (5), and (7).

In mitigation, Eddings presented substantial evidence at the hearing of his troubled youth. The testimony of his supervising Juvenile Officer indicated that Eddings had been raised without proper guidance. His parents were divorced when he was five, and until he was 14 Eddings lived with his mother without rules or supervision. App. 109. There is the suggestion that Eddings' mother was an alcoholic and possibly a prostitute. App. 110-111. By the time Eddings

was 14 he no longer could be controlled, and his mother sent him to live with his father. But neither could the father control the boy. Attempts to reason and talk gave way to physical punishment. The Juvenile Officer testified that Eddings was frightened and bitter, that his father overreacted and used excessive physical punishment: "Mr. Eddings found the only thing that he thought was effectful with the boy was actual punishment, or physical violence—hitting with a strap or something like this."¹ App. 121.

Testimony from other witnesses indicated that Eddings was emotionally disturbed in general and at the time of the crime, and that his mental and emotional development were at a level several years below his age. App. 134, 149, and 173. A state psychologist stated that Eddings had a sociopathic or anti-social personality and that 30% of youths suffering from such a disorder grew out of it as they aged. App. 137 and 139. A sociologist specializing in juvenile offenders testified that Eddings was treatable. App. 149. A psychiatrist testified that Eddings could be rehabilitated by intensive therapy over a 15 to 20 year period. App. 181. He testified further that Eddings "did pull the trigger, he did kill someone, but I don't even think he knew that he was doing it."² The psychiatrist suggested that, if treated, Eddings would no longer pose a serious threat to society. App. 180-181.

¹There was evidence that immediately after the shooting Eddings said "I would rather have shot an Officer than go back to where I live." App. 121.

²The psychiatrist suggested that, at the time of the murder, Eddings was in his own mind shooting his stepfather—a policeman who had been married to his mother for a brief period when Eddings was seven. The psychiatrist stated "I think that given the circumstances and the facts of his life, and the facts of his arrested development, he acted as a seven year old seeking revenge and rebellion; and the act—he did pull the trigger, he did kill someone, but I don't even think he knew that he was doing it." App. 172.

At the conclusion of all the evidence, the trial judge weighed the evidence of aggravating and mitigating circumstances. He found that the State had proved each of the three alleged aggravating circumstances beyond a reasonable doubt.³ Turning to the evidence of mitigating circumstances, the judge found that Eddings' youth was a mitigating factor of great weight: "I have given very serious consideration to the youth of the Defendant when this particular crime was committed. Should I fail to do this, I think I would not be carrying out my duty." App. 188-189. But he would not consider in mitigation the circumstances of Eddings' unhappy upbringing and emotional disturbance: "... the Court cannot be persuaded entirely by the ... fact that the youth was sixteen years old when this heinous crime was committed. *Nor can the Court in following the law, in my opinion, consider the fact of this young man's violent background.*" App. 189 (emphasis added). Finding that the only mitigating circumstance was Eddings' youth and finding further that this circumstance could not outweigh the aggravating circumstances present, the judge sentenced

³The trial judge found first that the crime was "heinous, atrocious, and cruel" because "designed to inflict a high degree of pain ... in utter indifference to the rights of Patrolman Crabtree." App. 187. Second, the judge found that the crime was "committed for the purpose of avoiding or preventing a lawful arrest or prosecution." App. 187-188. The evidence was sufficient to indicate that at the time of the offense Eddings did not wish to be returned to Missouri and that in stopping the car the Officer's intent was to make a lawful arrest. Finally, there was evidence that at one point on the day of the murder after Eddings had been taken to the county jail he told two officer that "if he was loose that he would shoot" them all. App. 77. There was also evidence that at another time, when an Officer refused to turn off the light in Eddings' cell, Eddings became angry and threatened the Officer: "Now I have shot one of you people, and I'll get you too if you don't turn this light out." App. 103. Based on these two "spontaneous utterances," app. 188, the trial judge found a strong likelihood that Eddings would again commit a criminal act of violence if released.

Eddings to death.

The Court of Criminal Appeals affirmed the sentence of death. *Eddings v. State*, 616 P. 2d 1159 (Okla. Crim. App. 1980). It found that each of the aggravating circumstances alleged by the State had been present.⁴ It recited the mitigating evidence presented by Eddings in some detail, but in the end it agreed with the trial court that only the fact of Eddings' youth was properly considered as a mitigating circumstance:

"[Eddings] also argues his mental state at the time of the murder. He stresses his family history in saying he was suffering from severe psychological and emotional disorders, and that the killing was in actuality an inevitable product of the way he was raised. There is no doubt that the petitioner has a personality disorder. But all the evidence tends to show that he knew the difference between right and wrong at the time he pulled the trigger, and that is the test of criminal responsibility in this State. [citation] For the same reason, the petitioner's family history is useful in explaining why he behaved the way he did, but it does not excuse his behavior." *Id.*, at 1170.

II

In *Lockett v. Ohio*, 438 U. S. 586 (1978), CHIEF JUSTICE BURGER, writing for the plurality, stated the rule that we apply today:⁵

⁴We understand the Court of Criminal Appeals to hold that the murder of a police officer in the performance of his duties is "heinous, atrocious, and cruel" under the Oklahoma statute. See *Roberts v. Louisiana*, 431 U. S. 633, 636 (1977). However, we doubt that the trial judge's understanding and application of this aggravating circumstance conformed to that degree of certainty required by our decision in *Godfrey v. Georgia*, 446 U. S. 420 (1980). See n. 3, *supra*.

⁵Because we decide this case on the basis of *Lockett v. Ohio*, 438 U. S. 586 (1978), we do not reach the question of whether—in light of contempo-

"[W]e conclude that the Eighth and Fourteenth Amendments require that the sentencer . . . not be precluded from considering, *as a mitigating factor*, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." *Id.*, at 604 (emphasis in original).

Recognizing "that the imposition of death by public authority is . . . profoundly different from all other penalties," the plurality held that the sentencer must be free to give "independent mitigating weight to aspects of the defendant's character and record and to circumstances of the offense proffered in mitigation. . . ." *Id.*, at 605. Because the Ohio death penalty statute only permitted consideration of three mitigating circumstances, the Court found the statute to be invalid.

As THE CHIEF JUSTICE explained, the rule in *Lockett* is the product of a considerable history reflecting the law's effort to develop a system of capital punishment at once consistent and principled but also humane and sensible to the uniqueness of the individual. Since the early days of the common law, the legal system has struggled to accommodate these twin objectives. Thus, the common law began by treating all criminal homicides as capital offenses, with a mandatory sentence of death. Later it allowed exceptions, first through an exclusion for those entitled to claim benefit of clergy and then by limiting capital punishment to murders upon "malice prepensed." In this country we attempted to soften the rigor of the system of mandatory death sentences we inherited from England, first by grading murder into different degrees of which only murder of the first degree was a capital offense and then by committing use of the death penalty to the absolute discretion of the jury. By the time of

rary standards—the Eighth Amendment forbids the execution of a defendant who was 16 at the time of the offense. *Cf. Bell v. Ohio*, 438 U. S. 637 (1978).

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Beginning with *Furman*, the Court has attempted to provide standards for a constitutional death penalty that would serve both goals of measured, consistent application and fairness to the accused. Thus, in *Gregg v. Georgia*, 428 U. S. 153 (1976), the plurality held that the danger of an arbitrary and capricious death penalty could be met "by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance." *Id.*, at 195. By its requirement that the jury find one of the aggravating circumstances listed in the death penalty statute, and by its direction to the jury to consider "any mitigating circumstances," the Georgia statute properly confined and directed the jury's attention to the circumstances of the particular crime and to "the characteristics of the person who committed the crime. . . ." *Id.*, at 197.⁴

Similarly, in *Woodson v. North Carolina*, 428 U. S. 280 (1976), the plurality held that mandatory death sentencing was not a permissible response to the problem of arbitrary jury discretion. As the history of capital punishment had shown, such an approach to the problem of discretion could not succeed while the Eighth Amendment required that the individual be given his due: "the fundamental respect for humanity underlying the Eighth Amendment . . . requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting

⁴"[T]he jury's attention is directed to the characteristics of the person who committed the crime: . . . Are there any special facts about this defendant that mitigate against imposing capital punishment (e. g., his youth, the extent of his cooperation with the police, his emotional state at the time of the crime)." 428 U. S., at 197.

the penalty of death." *Id.*, at 304.⁷ See *Roberts (Harry) v. Louisiana*, 431 U. S. 633 (1977); *Roberts (Stanislaus) v. Louisiana*, 428 U. S. 325 (1976).

Thus, the rule in *Lockett* followed from the earlier decisions of the Court and from the Court's insistence that capital punishment be imposed fairly, and with reasonable consistency, or not at all. By requiring that the sentencer be permitted to focus "on the characteristics of the person who committed the crime," *Gregg v. Georgia*, 428 U. S., at 197, the rule in *Lockett* recognizes that "justice . . . requires . . . that there be taken into account the circumstances of the offense together with the character and propensities of the offender." *Pennsylvania v. Ashe*, 302 U. S. 51, 55 (1937). By holding that the sentencer in capital cases must be permitted to consider any relevant mitigating factor, the rule in *Lockett* recognizes that a consistency produced by ignoring individual differences is a false consistency.

III

We now apply the rule in *Lockett* to the circumstances of this case. The trial judge stated that "in following the law," he could not "consider the fact of this young man's violent background." App. 189. There is no dispute that by "violent background" the trial judge was referring to the mitigating evidence of Eddings' family history.⁸ From this state-

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ment it is clear that the trial judge did not evaluate the evidence in mitigation and find it wanting as a matter of fact, rather he found that as a *matter of law* he was unable even to consider the evidence.

The Court of Criminal Appeals took the same approach. It found that the evidence in mitigation was not relevant because it did not tend to provide a legal excuse from criminal responsibility. Thus the court conceded that Eddings had a "personality disorder," but cast this evidence aside on the basis that "he knew the difference between right and wrong . . . and that is the test of criminal responsibility." *Eddings v. State, supra*, at 1170. Similarly, the evidence of Eddings' family history was "useful in explaining" his behavior, but it did not "excuse" the behavior. From these statements it appears that the Court of Criminal Appeals also considered only that evidence to be mitigating which would tend to support a legal excuse from criminal liability.

We find that the limitations placed by these courts upon the mitigating evidence they would consider violated the rule in *Lockett*.⁹ Just as the state may not by statute preclude

the violent background, which I assume he meant was . . . [that Eddings] was subject to some slapping around and some beating by his father.") (argument of respondent).

⁹Eddings argued to the Court of Criminal Appeals that imposition of the death penalty in the particular circumstances of his case, and in light of the mitigating factors present, was excessive punishment under the Eighth Amendment. But he did not specifically argue that the trial judge erred in refusing to consider relevant mitigating circumstances in the process of sentencing. In rejecting his claim of excessive punishment, the court examined the aggravating and mitigating circumstances and held that Eddings' family history and emotional disorder were *not* mitigating circumstances that ought to be weighed in the balance. Thus, the court's holding that these factors were irrelevant to an inquiry into excessiveness was also a holding that they need not have been considered by the sentencer in imposing capital punishment. Similarly, Eddings' argument in his petition for certiorari that imposition of the death penalty was excessive on the facts of this case comprises the argument that the sentencer erred in refus-

the sentencer from considering any mitigating factor, neither may the sentencer, refuse to consider, as a matter of law, any relevant mitigating evidence. In this instance, it was as if the trial judge had instructed a jury to disregard the mitigating evidence Eddings proffered on his behalf. The sentencer, and the Court of Criminal Appeals on review, may determine the weight to be given relevant mitigating evidence. But they may not give it no weight by excluding such evidence from their consideration.¹⁰

Nor do we doubt that the evidence Eddings offered was relevant mitigating evidence. Eddings was a youth of 16 years at the time of the murder. Evidence of a difficult family history and of emotional disturbance is typically introduced by defendants in mitigation. See *McGautha v. California*, 402 U. S. 183, 187-188 and 193 (1971). In some cases, such evidence properly may be given little weight. But when the defendant was 16 years old at the time of the offense there can be no doubt that evidence of a turbulent

ing to consider relevant mitigating circumstances proffered by him at the sentencing hearing. In short, although neither the opinion of the Court of Appeals nor Eddings' petition for certiorari spoke to our decision in *Lockett* by name, the question of whether the decisions below were consistent with our decision in *Lockett* is properly before us. Our jurisdiction does not depend on citation to book and verse. See, e. g., *New York ex rel. Bryant v. Zimmerman*, 278 U. S. 60, 67 (1928).

Moreover, Eddings specifically raised the argument upon *Lockett* in his state petition for rehearing. See Petition for Re-Hearing and Supporting Brief, Proposition III, at 10. The Court of Criminal Appeals denied the petition, stating that it had given it full consideration and had been "fully advised in the premises." See Rule 1.18, Rules of the Court of Criminal Appeals (court will entertain new arguments upon a petition for rehearing). Cf. *Cox v. Cohn*, 420 U. S. 469, 476 (1975). See also *Wood v. Georgia*, — U. S. —, — n. 5 (1981); *Beck v. Alabama*, 447 U. S. 625, 631 n. 6 (1980); *Vachon v. New Hampshire*, 414 U. S. 478, 479 n. 3 (1974).

"We note that the Oklahoma death penalty statute permits the defendant to present evidence "as to any mitigating circumstance." Okla. Stat., Tit. 21, § 701.10. We require the sentencer to listen.

family history, of beatings by a harsh father, and of severe emotional disturbance is of the utmost relevance and importance.

The trial judge recognized that youth must be considered a relevant mitigating factor. But youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage.¹¹ Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults.¹² Particularly "during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment" expected of adults. *Bellotti v. Baird*, 443 U. S. 622, 635 (1979).

Even the normal 16 year old customarily lacks the maturity of an adult. In this case, Eddings was not a normal 16 year old; he had been deprived of the care, concern and paternal attention that children deserve. On the contrary, he was

¹¹ "Adolescents everywhere, from every walk of life, are often dangerous to themselves and to others." The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 41 (1967). "[A]dolescents, particularly in the early and middle teen years, are more vulnerable, more impulsive, and less self-disciplined than adults. Crimes committed by youths may be just as harmful to victims as those committed by older persons, but they deserve less punishment because adolescents may have less capacity to control their conduct and to think in long-range terms than adults. Moreover, youth crime as such is not exclusively the offender's fault; offenses by the young also represent a failure of family, school, and the social system, which share responsibility for the development of America's youth." Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, *Confronting Youth Crime* 7 (1978).

¹² As Justice Frankfurter stated, "[c]hildren have a very special place in life which law should reflect." *May v. Anderson*, 345 U. S. 528, 536 (1953) (Frankfurter, J., concurring). And indeed the law does reflect this special place. Every state in the country makes some separate provision for juvenile offenders. See *In re Gault*, 387 U. S. 1, 14 (1967).

a juvenile with severe emotional problems, and had been raised in a neglectful, sometimes even violent, family background. In addition, there was testimony that Eddings' mental and emotional development were at a level several years below his chronological age. All of this does not suggest an absence of responsibility for the crime of murder, deliberately committed in this case.¹⁸ Rather, it is to say that just as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be given the closest attention in sentencing.

On remand, the state courts must consider this evidence and weigh it against the evidence of the aggravating circumstances. We do not weigh the evidence for them. We require only that they consider all of the relevant evidence proffered by Eddings in mitigation.

Accordingly, the judgment is reversed to the extent that it sustains the imposition of the death penalty, and the case is remanded for further proceedings not inconsistent with this opinion.

So ordered.

¹⁸ We are not unaware of the extent to which minors engage increasingly in violent crime. See, e. g., National Advisory Committee on Criminal Justice Standards and Goals, *Juvenile Justice and Delinquency Prevention*, Report of the Task Force on Juvenile Justice and Delinquency Prevention, 3 (1976). Nor do we suggest an absence of legal responsibility. We are concerned here with the severity of the ultimate penalty: the death sentence imposed for the crime of murder by an emotionally disturbed youth with a disturbed child's immaturity.

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 1, 1981

Dear Chief:

In circulating my earlier memo stating that I would write a dissent in No. 80-5727, Eddings v. Oklahoma, I had forgotten your earlier memo stating that you would dissent in that case. I will, of course, await your dissent.

Sincerely,

WR

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

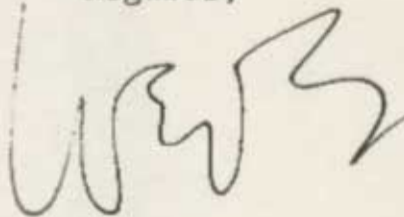
December 1, 1981

Re: No. 80-5727 - Monty Lee Eddings v. Oklahoma

MEMORANDUM TO THE CONFERENCE:

I will file a dissent in this case.

Regards,

A handwritten signature in dark ink, appearing to be "W. E. B.", written in a cursive, stylized manner.

Supreme Court of the United States
Washington, D. C. 20543

✓

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 1, 1981

Re: No. 80-5727 Eddings v. Oklahoma

Dear Lewis:

In the event that none of my senior colleagues in dissent intend to write in this case, I shall.

Sincerely,

W

Justice Powell
cc: The Conference

Py 10

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: _____

Recirculated: DEC 2 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-5727

MONTY LEE EDDINGS, PETITIONER v. OKLAHOMA

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL
APPEALS OF OKLAHOMA

[November —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

Petitioner Monty Lee Eddings was convicted of first degree murder and sentenced to death. Because this sentence was imposed without "the type of individualized consideration of mitigating factors . . . required by the Eighth and Fourteenth Amendments in capital cases," *Lockett v. Ohio*, 438 U. S. 586, 606 (1978) (opinion of BURGER, C.J.), we reverse.

I

On April 4, 1977, Eddings, a 16 year old youth, and several younger companions ran away from their Missouri homes. They travelled in a car owned by Eddings' brother, and drove without destination or purpose in a southwesterly direction eventually reaching the Oklahoma turnpike. Eddings had in the car a shotgun and several rifles he had taken from his father. After he momentarily lost control of the car, he was signalled to pull over by Officer Crabtree of the Oklahoma Highway Patrol. Eddings did so, and when the Officer approached the car, Eddings stuck a loaded shotgun out of the window and fired, killing the Officer.

Because Eddings was a juvenile, the State moved to have him certified to stand trial as an adult. Finding that there was prosecutive merit to the complaint and that Eddings was not amenable to rehabilitation within the juvenile system, the

trial court granted the motion. The ruling was affirmed on appeal. *Matter of M.E.*, 584 P. 2d 1340 (Okla. Crim. App. 1978), *cert denied*, 436 U. S. 921 (1978). Eddings was then charged with murder in the first degree, and the District Court of Creek County found him guilty upon his plea of *nolo contendere*.

The Oklahoma death penalty statute provides, in pertinent part:

"Upon conviction . . . of guilt of a defendant of murder in the first degree, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. . . . In the sentencing proceeding, evidence may be presented as to *any mitigating circumstances* or as to any of the aggravating circumstances enumerated in this act." Okla. Stat., Tit. 21, § 701.10 (emphasis added).

Section 701.12 lists seven separate aggravating circumstances; the statute nowhere defines what is meant by "any mitigating circumstances."

At the sentencing hearing, the State alleged three of the aggravating circumstances enumerated in the statute: that the murder was especially heinous, atrocious, or cruel, that the crime was committed for the purpose of avoiding or preventing a lawful arrest, and that there was a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society. Okla. Stat., Tit. 21, § 701.12(4), (5), and (7).

In mitigation, Eddings presented substantial evidence at the hearing of his troubled youth. The testimony of his supervising Juvenile Officer indicated that Eddings had been raised without proper guidance. His parents were divorced when he was five, and until he was 14 Eddings lived with his mother without rules or supervision. App. 109. There is the suggestion that Eddings' mother was an alcoholic and possibly a prostitute. App. 110-111. By the time Eddings

was 14 he no longer could be controlled, and his mother sent him to live with his father. But neither could the father control the boy. Attempts to reason and talk gave way to physical punishment. The Juvenile Officer testified that Eddings was frightened and bitter, that his father overreacted and used excessive physical punishment: "Mr. Eddings found the only thing that he thought was effectful with the boy was actual punishment, or physical violence—hitting with a strap or something like this."¹ App. 121.

Testimony from other witnesses indicated that Eddings was emotionally disturbed in general and at the time of the crime, and that his mental and emotional development were at a level several years below his age. App. 134, 149, and 173. A state psychologist stated that Eddings had a sociopathic or anti-social personality and that 30% of youths suffering from such a disorder grew out of it as they aged. App. 137 and 139. A sociologist specializing in juvenile offenders testified that Eddings was treatable. App. 149. A psychiatrist testified that Eddings could be rehabilitated by intensive therapy over a 15 to 20 year period. App. 181. He testified further that Eddings "did pull the trigger, he did kill someone, but I don't even think he knew that he was doing it."² The psychiatrist suggested that, if treated, Eddings would no longer pose a serious threat to society. App. 180-181.

¹There was evidence that immediately after the shooting Eddings said "I would rather have shot an Officer than go back to where I live." App. 121.

²The psychiatrist suggested that, at the time of the murder, Eddings was in his own mind shooting his stepfather—a policeman who had been married to his mother for a brief period when Eddings was seven. The psychiatrist stated "I think that given the circumstances and the facts of his life, and the facts of his arrested development, he acted as a seven year old seeking revenge and rebellion; and the act—he did pull the trigger, he did kill someone, but I don't even think he knew that he was doing it." App. 172.

At the conclusion of all the evidence, the trial judge weighed the evidence of aggravating and mitigating circumstances. He found that the State had proved each of the three alleged aggravating circumstances beyond a reasonable doubt.⁴ Turning to the evidence of mitigating circumstances, the judge found that Eddings' youth was a mitigating factor of great weight: "I have given very serious consideration to the youth of the Defendant when this particular crime was committed. Should I fail to do this, I think I would not be carrying out my duty." App. 188-189. But he would not consider in mitigation the circumstances of Eddings' unhappy upbringing and emotional disturbance: "... the Court cannot be persuaded entirely by the . . . fact that the youth was sixteen years old when this heinous crime was committed. *Nor can the Court in following the law, in my opinion, consider the fact of this young man's violent background.*" App. 189 (emphasis added). Finding that the only mitigating circumstance was Eddings' youth and finding further that this circumstance could not outweigh the aggravating circumstances present, the judge sentenced

⁴The trial judge found first that the crime was "heinous, atrocious, and cruel" because "designed to inflict a high degree of pain . . . in utter indifference to the rights of Patrolman Crabtree." App. 187. Second, the judge found that the crime was "committed for the purpose of avoiding or preventing a lawful arrest or prosecution." App. 187-188. The evidence was sufficient to indicate that at the time of the offense Eddings did not wish to be returned to Missouri and that in stopping the car the Officer's intent was to make a lawful arrest. Finally, there was evidence that at one point on the day of the murder after Eddings had been taken to the county jail he told to two officer that "if he was loose that he would shoot" them all. App. 77. There was also evidence that at another time, when an Officer refused to turn off the light in Eddings' cell, Eddings became angry and threatened the Officer: "Now I have shot one of you people, and I'll get you too if you don't turn this light out." App. 108. Based on these two "spontaneous utterances," app. 188, the trial judge found a strong likelihood that Eddings would again commit a criminal act of violence if released.

Eddings to death.

The Court of Criminal Appeals affirmed the sentence of death. *Eddings v. State*, 616 P. 2d 1159 (Okla. Crim. App. 1980). It found that each of the aggravating circumstances alleged by the State had been present.⁴ It recited the mitigating evidence presented by Eddings in some detail, but in the end it agreed with the trial court that only the fact of Eddings' youth was properly considered as a mitigating circumstance:

"[Eddings] also argues his mental state at the time of the murder. He stresses his family history in saying he was suffering from severe psychological and emotional disorders, and that the killing was in actuality an inevitable product of the way he was raised. There is no doubt that the petitioner has a personality disorder. But all the evidence tends to show that he knew the difference between right and wrong at the time he pulled the trigger, and that is the test of criminal responsibility in this State. [citation] For the same reason, the petitioner's family history is useful in explaining why he behaved the way he did, but it does not excuse his behavior." *Id.*, at 1170.

II

In *Lockett v. Ohio*, 438 U. S. 586 (1978), CHIEF JUSTICE BURGER, writing for the plurality, stated the rule that we apply today:⁵

⁴We understand the Court of Criminal Appeals to hold that the murder of a police officer in the performance of his duties is "heinous, atrocious, and cruel" under the Oklahoma statute. See *Roberts v. Louisiana*, 431 U. S. 633, 636 (1977). However, we doubt that the trial judge's understanding and application of this aggravating circumstance conformed to that degree of certainty required by our decision in *Godfrey v. Georgia*, 446 U. S. 420 (1980). See n. 3, *supra*.

⁵Because we decide this case on the basis of *Lockett v. Ohio*, 438 U. S. 586 (1978), we do not reach the question of whether—in light of contempo-

"[W]e conclude that the Eighth and Fourteenth Amendments require that the sentencer . . . not be precluded from considering, as a *mitigating factor*, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." *Id.*, at 604 (emphasis in original).

Recognizing "that the imposition of death by public authority is . . . profoundly different from all other penalties," the plurality held that the sentencer must be free to give "independent mitigating weight to aspects of the defendant's character and record and to circumstances of the offense proffered in mitigation. . . ." *Id.*, at 605. Because the Ohio death penalty statute only permitted consideration of three mitigating circumstances, the Court found the statute to be invalid.

As THE CHIEF JUSTICE explained, the rule in *Lockett* is the product of a considerable history reflecting the law's effort to develop a system of capital punishment at once consistent and principled but also humane and sensible to the uniqueness of the individual. Since the early days of the common law, the legal system has struggled to accommodate these twin objectives. Thus, the common law began by treating all criminal homicides as capital offenses, with a mandatory sentence of death. Later it allowed exceptions, first through an exclusion for those entitled to claim benefit of clergy and then by limiting capital punishment to murders upon "malice prepensed." In this country we attempted to soften the rigor of the system of mandatory death sentences we inherited from England, first by grading murder into different degrees of which only murder of the first degree was a capital offense and then by committing use of the death penalty to the absolute discretion of the jury. By the time of

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Nor do we doubt that the evidence Eddings offered was relevant mitigating evidence. Eddings was a youth of 16 years at the time of the murder. Evidence of a difficult family history and of emotional disturbance is typically introduced by defendants in mitigation. See *McGautha v. California*, 402 U. S. 183, 187-188 and 193 (1971). In some cases, such evidence properly may be given little weight. But when the defendant was 16 years old at the time of the offense there can be no doubt that evidence of a turbulent

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Moreover, Eddings specifically raised the argument upon *Lockett* in his state petition for rehearing. See Petition for Re-Hearing and Supporting Brief, Proposition III, at 10. The Court of Criminal Appeals denied the petition, stating that it had given it full consideration and had been "fully advised in the premises." See Rule 1.18, Rules of the Court of Criminal Appeals (court will entertain new arguments upon a petition for rehearing). Cf. *Cox v. Cohn*, 420 U. S. 469, 476 (1975). See also *Wood v. Georgia*, — U. S. —, — n. 5 (1981); *Beck v. Alabama*, 447 U. S. 625, 631 n. 6 (1980); *Vachon v. New Hampshire*, 414 U. S. 478, 479 n. 3 (1974).

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The trial judge recognized that youth must be considered a relevant mitigating factor. But youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage.¹¹ Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults.¹² Particularly "during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment" expected of adults. *Bellotti v. Baird*, 443 U. S. 622, 635 (1979).

Even the normal 16 year old customarily lacks the maturity of an adult. In this case, Eddings was not a normal 16 year old; he had been deprived of the care, concern and paternal attention that children deserve. On the contrary, he was

¹¹ "Adolescents everywhere, from every walk of life, are often dangerous to themselves and to others." The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 41 (1967). "[A]dolescents, particularly in the early and middle teen years, are more vulnerable, more impulsive, and less self-disciplined than adults. Crimes committed by youths may be just as harmful to victims as those committed by older persons, but they deserve less punishment because adolescents may have less capacity to control their conduct and to think in long-range terms than adults. Moreover, youth crime as such is not exclusively the offender's fault; offenses by the young also represent a failure of family, school, and the social system, which share responsibility for the development of America's youth." Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, *Confronting Youth Crime* 7 (1978).

¹² As Justice Frankfurter stated, "[c]hildren have a very special place in life which law should reflect." *May v. Anderson*, 345 U. S. 528, 538 (1953) (Frankfurter, J., concurring). And indeed the law does reflect this special place. Every state in the country makes some separate provision for juvenile offenders. See *In re Gault*, 387 U. S. 1, 14 (1967).

a juvenile with severe emotional problems, and had been raised in a neglectful, sometimes even violent, family background. In addition, there was testimony that Eddings' mental and emotional development were at a level several years below his chronological age. All of this does not suggest an absence of responsibility for the crime of murder, deliberately committed in this case.¹³ Rather, it is to say that just as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be given the closest attention in sentencing.

On remand, the state courts must consider this evidence and weigh it against the evidence of the aggravating circumstances. We do not weigh the evidence for them. We require only that they consider all of the relevant evidence proffered by Eddings in mitigation.

Accordingly, the judgment is reversed to the extent that it sustains the imposition of the death penalty, and the case is remanded for further proceedings not inconsistent with this opinion.

So ordered.

¹³ We are not unaware of the extent to which minors engage increasingly in violent crime. See, e. g., National Advisory Committee on Criminal Justice Standards and Goals, Juvenile Justice and Delinquency Prevention, Report of the Task Force on Juvenile Justice and Delinquency Prevention, 3 (1976). Nor do we suggest an absence of legal responsibility. We are concerned here with the severity of the ultimate penalty: the death sentence imposed for the crime of murder by an emotionally disturbed youth with a disturbed child's immaturity.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS



December 2, 1981

Re: 80-5727 - Eddings v. Oklahoma

Dear Lewis:

Please join me.

Respectfully,

A handwritten signature, appearing to be "John", is written in cursive below the word "Respectfully,".

Justice Powell

Copies to the Conference

David - please comply
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 2, 1981

Re: 80-5727 - Eddings v. Oklahoma

Dear Lewis:

Your opinion is excellent and my join is unqualified. I make only one trivial suggestion that you are surely free to reject. In the last sentence of footnote 10 on page 10, instead of saying "we require", I wonder if it might be better to say "Lockett requires"?

Respectfully,

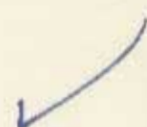


Justice Powell

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 3, 1981

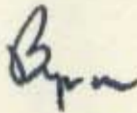


Re: 80-5727 - Eddings v. Oklahoma

Dear Lewis,

I shall be in dissent and shall
await the Chief Justice's writing.

Sincerely yours,



Justice Powell

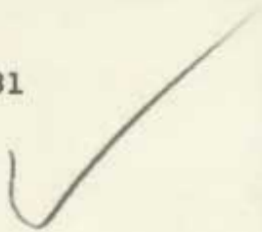
Copies to the Conference

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 3, 1981



Re: No. 80-5727 - Eddings v. Oklahoma

Dear Lewis:

Please join me.

Sincerely,

Jm.

T.M.

Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 3, 1981

No. 80-5727 Eddings v. Oklahoma

Dear Lewis,

I plan to write a separate concurrence in this case expressing agreement with your application of the rule in Lockett to the circumstances of this case, but also indicating certain other observations concerning the application of the death penalty to minors.

Sincerely,

Sandra

Justice Powell

Copies to the Conference

DEC 11 1981 -D AM

Page proof of syllabus as approved.

- Lineup included.
- Lineup still to be added. Please send lineup to me when available.

Another copy of page proof of syllabus as approved to show—

- Lineup, which has now been added.
- Additional changes in syllabus.

HENRY C. LIND
Reporter of Decisions.

NOTE: Where it is feasible, a syllabus (headnote) will be released, as in being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

EDDINGS v. OKLAHOMA

CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMA

No. 80-5727. Argued November 2, 1981—Decided 1981

Petitioner was convicted in an Oklahoma trial court of first-degree murder for killing a police officer and was sentenced to death. At the time of the offense petitioner was 16 years old, but he was tried as an adult. The Oklahoma death penalty statute provides that in a sentencing proceeding evidence may be presented as to "any mitigating circumstances" or as to any of certain enumerated aggravating circumstances. At the sentencing hearing, the State alleged certain of the enumerated aggravating circumstances, and petitioner, in mitigation, presented substantial evidence of a turbulent family history, of beatings by a harsh father, and of severe emotional disturbance. In imposing the death sentence, the trial judge found that the State had proved each of the alleged aggravating circumstances. But he refused, as a matter of law, to consider in mitigation the circumstances of petitioner's unhappy upbringing and emotional disturbance, and found that the only mitigating circumstance was petitioner's youth, which circumstance was held to be insufficient to outweigh the aggravating circumstances. The Oklahoma Court of Criminal Appeals affirmed.

Held: The death sentence must be vacated as it was imposed without "the type of individualized consideration of mitigating factors . . . required by the Eighth and Fourteenth Amendments in capital cases," *Lockett v. Ohio*, 438 U. S. 583, 603. Pp. 5-12.

(a) "[T]he Eighth and Fourteenth Amendments require that the sentencer . . . not be precluded from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." *Lockett v. Ohio*, *supra*, at 604. This rule follows from the requirement that capital punishment be imposed fairly and

Syllabus

with reasonable consistency or not at all, and recognizes that a consistency produced by ignoring individual differences is a false consistency. Pp. 5-8.


(b) The limitation placed by the courts below upon the mitigating evidence they would consider violated the above rule. Just as the State may not by statute preclude the sentencer from considering any mitigating factor, neither may the sentencer refuse to consider, *as a matter of law*, any relevant mitigating evidence. The sentencer and the reviewing court may determine the weight to be given relevant mitigating evidence but may not give it no weight by excluding it from their consideration. Here, the evidence of a difficult family history and of emotional disturbance petitioner offered at the sentencing hearing was of utmost relevance and importance and should have been given the closest attention in sentencing. Pp. 8-12.

616 P. 2d 1159, reversed in part and remanded.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 14, 1981

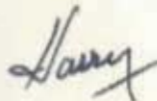


Re: No. 80-5727 - Eddings v. Oklahoma

Dear Lewis:

I shall await the dissent or dissents in this case.

Sincerely,



Justice Powell

cc: The Conference

df1 12/30/81

To: Justice Powell

From: David

Re: The Chief's dissent in Eddings--No. 80-5727

I think we come out of this on top, and I am not sure that any reply is necessary. I can think of four responses we might wish to make.

1. As a minor point, at page 3 we state that testimony at trial indicated that "30% of youths suffering from [sociopathic] disorders grew out of it as they aged." The Chief points out at page 8, note 8, that the psychiatrist who testified to this figure also testified to a lower figure of 20%. Perhaps we could *you* add the word "approximately" to our statement. Alternatively we could change "30%" to "20-30%." Or we can just ignore the Chief's jab.

2. The Chief suggests at various places that the state court opinions are ambiguous. He suggests as well that a remand will be an exercise in futility.

We could respond to these statements by suggesting that if the matter is ambiguous we think that the appropriate course is to remand. This is a capital case after all. Also, requiring that the lower courts adhere to Lockett is not an exercise in

futility and it is odd to characterize compliance with constitutional requirements in this way. We do not know if the result will be different on a remand. But surely that is beside the point. *Yes*

3. The dissent notes that we state that evidence of a troubled youth is mitigating evidence of the utmost importance. The Chief suggests that we are trying to weigh the evidence for the lower courts. To some extent he is right, and it is a deliberate ambiguity in the opinion, as we have discussed. But the fact that this evidence is so important and that it was given so little analysis by the lower courts tends to support our position that the evidence simply was not considered. We could add a sentence to this effect. On the whole, I think we might do best to do nothing on this score. *Agree*

4. Finally, the Chief suggests in the last section that he would "bite the bullet" and affirm. He does not discuss at all the serious eighth amendment question posed by the execution of juveniles. For this cavalier statement, I suspect the Chief will lose Justice Blackmun. At any rate we could say something about the importance of the question, and that we are puzzled by the dissent's "treatment" of the issue.


I can draft language, if you like, for any of these changes if you think any desirable.

I hope Justice O'Connor is still on the wagon. We haven't heard a peep out of her since her rather ambiguous join-- if that's what it was.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 30, 1981

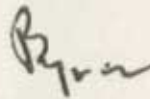


Re: 80-5727 - Eddings v. Oklahoma

Dear Chief,

I join your dissent in this
case.

Sincerely,



Chief Justice

Copies to the Conference

bkh

Changes AT 3, 4, 9, 10

REVISED
DRAFT

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated:

Recirculated: JAN 4 1982

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-5727

MONTY LEE EDDINGS, PETITIONER v. OKLAHOMA

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL
APPEALS OF OKLAHOMA

[January —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

Petitioner Monty Lee Eddings was convicted of first degree murder and sentenced to death. Because this sentence was imposed without "the type of individualized consideration of mitigating factors . . . required by the Eighth and Fourteenth Amendments in capital cases," *Lockett v. Ohio*, 438 U. S. 586, 606 (1978) (opinion of BURGER, C.J.), we reverse.

I

On April 4, 1977, Eddings, a 16 year old youth, and several younger companions ran away from their Missouri homes. They travelled in a car owned by Eddings' brother, and drove without destination or purpose in a southwesterly direction eventually reaching the Oklahoma turnpike. Eddings had in the car a shotgun and several rifles he had taken from his father. After he momentarily lost control of the car, he was signalled to pull over by Officer Crabtree of the Oklahoma Highway Patrol. Eddings did so, and when the Officer approached the car, Eddings stuck a loaded shotgun out of the window and fired, killing the Officer.

Because Eddings was a juvenile, the State moved to have him certified to stand trial as an adult. Finding that there was prosecutive merit to the complaint and that Eddings was not amenable to rehabilitation within the juvenile system, the

trial court granted the motion. The ruling was affirmed on appeal. *Matter of M.E.*, 584 P. 2d 1340 (Okla. Crim. App. 1978), *cert denied*, 436 U. S. 921 (1978). Eddings was then charged with murder in the first degree, and the District Court of Creek County found him guilty upon his plea of *nolo contendere*.

The Oklahoma death penalty statute provides, in pertinent part:

"Upon conviction . . . of guilt of a defendant of murder in the first degree, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. . . . In the sentencing proceeding, evidence may be presented as to *any mitigating circumstances* or as to any of the aggravating circumstances enumerated in this act." Okla. Stat., Tit. 21, § 701.10 (emphasis added).

Section 701.12 lists seven separate aggravating circumstances; the statute nowhere defines what is meant by "any mitigating circumstances."

At the sentencing hearing, the State alleged three of the aggravating circumstances enumerated in the statute: that the murder was especially heinous, atrocious, or cruel, that the crime was committed for the purpose of avoiding or preventing a lawful arrest, and that there was a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society. Okla. Stat., Tit. 21, § 701.12(4), (5), and (7).

In mitigation, Eddings presented substantial evidence at the hearing of his troubled youth. The testimony of his supervising Juvenile Officer indicated that Eddings had been raised without proper guidance. His parents were divorced when he was five, and until he was 14 Eddings lived with his mother without rules or supervision. App. 109. There is the suggestion that Eddings' mother was an alcoholic and possibly a prostitute. App. 110-111. By the time Eddings

was 14 he no longer could be controlled, and his mother sent him to live with his father. But neither could the father control the boy. Attempts to reason and talk gave way to physical punishment. The Juvenile Officer testified that Eddings was frightened and bitter, that his father overreacted and used excessive physical punishment: "Mr. Eddings found the only thing that he thought was effectful with the boy was actual punishment, or physical violence—hitting with a strap or something like this."¹ App. 121.

Testimony from other witnesses indicated that Eddings was emotionally disturbed in general and at the time of the crime, and that his mental and emotional development were at a level several years below his age. App. 134, 149, and 173. A state psychologist stated that Eddings had a sociopathic or anti-social personality and that approximately 30% of youths suffering from such a disorder grew out of it as they aged. App. 137 and 139. A sociologist specializing in juvenile offenders testified that Eddings was treatable. App. 149. A psychiatrist testified that Eddings could be rehabilitated by intensive therapy over a 15 to 20 year period. App. 181. He testified further that Eddings "did pull the trigger, he did kill someone, but I don't even think he knew that he was doing it."² The psychiatrist suggested that, if treated, Eddings would no longer pose a serious threat to society. App. 180-181.

¹There was evidence that immediately after the shooting Eddings said "I would rather have shot an Officer than go back to where I live." App. 121.

²The psychiatrist suggested that, at the time of the murder, Eddings was in his own mind shooting his stepfather—a policeman who had been married to his mother for a brief period when Eddings was seven. The psychiatrist stated "I think that given the circumstances and the facts of his life, and the facts of his arrested development, he acted as a seven year old seeking revenge and rebellion; and the act—he did pull the trigger, he did kill someone, but I don't even think he knew that he was doing it." App. 172.

At the conclusion of all the evidence, the trial judge weighed the evidence of aggravating and mitigating circumstances. He found that the State had proved each of the three alleged aggravating circumstances beyond a reasonable doubt.⁸ Turning to the evidence of mitigating circumstances, the judge found that Eddings' youth was a mitigating factor of great weight: "I have given very serious consideration to the youth of the Defendant when this particular crime was committed. Should I fail to do this, I think I would not be carrying out my duty." App. 188-189. But he would not consider in mitigation the circumstances of Eddings' unhappy upbringing and emotional disturbance: "... the Court cannot be persuaded entirely by the ... fact that the youth was sixteen years old when this heinous crime was committed. *Nor can the Court in following the law, in my opinion, consider the fact of this young man's violent background.*" App. 189 (emphasis added). Finding that the only mitigating circumstance was Eddings' youth and finding further that this circumstance could not outweigh the

⁸ The trial judge found first that the crime was "heinous, atrocious, and cruel" because "designed to inflict a high degree of pain ... in utter indifference to the rights of Patrolman Crabtree." App. 187. Second, the judge found that the crime was "committed for the purpose of avoiding or preventing a lawful arrest or prosecution." App. 187-188. The evidence was sufficient to indicate that at the time of the offense Eddings did not wish to be returned to Missouri and that in stopping the car the Officer's intent was to make a lawful arrest. Finally, the trial judge found that Eddings posed a continuing threat of violence to society. There was evidence that at one point on the day of the murder, after Eddings had been taken to the county jail, he told two officers that "if he was loose ... he would shoot" them all. App. 77. There was also evidence that at another time, when an Officer refused to turn off the light in Eddings' cell, Eddings became angry and threatened the Officer: "Now I have shot one of you people, and I'll get you too if you don't turn this light out." App. 103. Based on these two "spontaneous utterances," app. 188, the trial judge found a strong likelihood that Eddings would again commit a criminal act of violence if released.

aggravating circumstances present, the judge sentenced Eddings to death.

The Court of Criminal Appeals affirmed the sentence of death. *Eddings v. State*, 616 P. 2d 1159 (Okla. Crim. App. 1980). It found that each of the aggravating circumstances alleged by the State had been present.⁴ It recited the mitigating evidence presented by Eddings in some detail, but in the end it agreed with the trial court that only the fact of Eddings' youth was properly considered as a mitigating circumstance:

"[Eddings] also argues his mental state at the time of the murder. He stresses his family history in saying he was suffering from severe psychological and emotional disorders, and that the killing was in actuality an inevitable product of the way he was raised. There is no doubt that the petitioner has a personality disorder. But all the evidence tends to show that he knew the difference between right and wrong at the time he pulled the trigger, and that is the test of criminal responsibility in this State. [citation] For the same reason, the petitioner's family history is useful in explaining why he behaved the way he did, but it does not excuse his behavior." *Id.*, at 1170.

II

In *Lockett v. Ohio*, 438 U. S. 586 (1978), CHIEF JUSTICE BURGER, writing for the plurality, stated the rule that we apply today:⁵

⁴We understand the Court of Criminal Appeals to hold that the murder of a police officer in the performance of his duties is "heinous, atrocious, and cruel" under the Oklahoma statute. See *Roberts v. Louisiana*, 431 U. S. 633, 636 (1977). However, we doubt that the trial judge's understanding and application of this aggravating circumstance conformed to that degree of certainty required by our decision in *Godfrey v. Georgia*, 446 U. S. 420 (1980). See n. 3, *supra*.

⁵Because we decide this case on the basis of *Lockett v. Ohio*, 438 U. S.

"[W]e conclude that the Eighth and Fourteenth Amendments require that the sentencer . . . not be precluded from considering, as a *mitigating factor*, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." *Id.*, at 604 (emphasis in original).

Recognizing "that the imposition of death by public authority is . . . profoundly different from all other penalties," the plurality held that the sentencer must be free to give "independent mitigating weight to aspects of the defendant's character and record and to circumstances of the offense proffered in mitigation. . . ." *Id.*, at 605. Because the Ohio death penalty statute only permitted consideration of three mitigating circumstances, the Court found the statute to be invalid.

As THE CHIEF JUSTICE explained, the rule in *Lockett* is the product of a considerable history reflecting the law's effort to develop a system of capital punishment at once consistent and principled but also humane and sensible to the uniqueness of the individual. Since the early days of the common law, the legal system has struggled to accommodate these twin objectives. Thus, the common law began by treating all criminal homicides as capital offenses, with a mandatory sentence of death. Later it allowed exceptions, first through an exclusion for those entitled to claim benefit of clergy and then by limiting capital punishment to murders upon "malice prepensed." In this country we attempted to soften the rigor of the system of mandatory death sentences we inherited from England, first by grading murder into different degrees of which only murder of the first degree was a capital offense and then by committing use of the death pen-

586 (1978), we do not reach the question of whether—in light of contemporary standards—the Eighth Amendment forbids the execution of a defendant who was 16 at the time of the offense. *Cl. Bell v. Ohio*, 438 U. S. 637 (1978).

alty to the absolute discretion of the jury. By the time of our decision in *Furman v. Georgia*, 408 U. S. 238 (1972), the country had moved so far from a mandatory system that the imposition of capital punishment frequently had become arbitrary and capricious.

Beginning with *Furman*, the Court has attempted to provide standards for a constitutional death penalty that would serve both goals of measured, consistent application and fairness to the accused. Thus, in *Gregg v. Georgia*, 428 U. S. 153 (1976), the plurality held that the danger of an arbitrary and capricious death penalty could be met "by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance." *Id.*, at 195. By its requirement that the jury find one of the aggravating circumstances listed in the death penalty statute, and by its direction to the jury to consider "any mitigating circumstances," the Georgia statute properly confined and directed the jury's attention to the circumstances of the particular crime and to "the characteristics of the person who committed the crime. . . ." *Id.*, at 197.⁴

Similarly, in *Woodson v. North Carolina*, 428 U. S. 280 (1976), the plurality held that mandatory death sentencing was not a permissible response to the problem of arbitrary jury discretion. As the history of capital punishment had shown, such an approach to the problem of discretion could not succeed while the Eighth Amendment required that the individual be given his due: "the fundamental respect for humanity underlying the Eighth Amendment . . . requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a

⁴"[T]he jury's attention is directed to the characteristics of the person who committed the crime: . . . Are there any special facts about this defendant that mitigate against imposing capital punishment (*e. g.*, his youth, the extent of his cooperation with the police, his emotional state at the time of the crime)." 428 U. S., at 197.

constitutionally indispensable part of the process of inflicting the penalty of death." *Id.*, at 304.¹ See *Roberts (Harry) v. Louisiana*, 431 U. S. 633 (1977); *Roberts (Stanislaus) v. Louisiana*, 428 U. S. 325 (1976).

Thus, the rule in *Lockett* followed from the earlier decisions of the Court and from the Court's insistence that capital punishment be imposed fairly, and with reasonable consistency, or not at all. By requiring that the sentencer be permitted to focus "on the characteristics of the person who committed the crime," *Gregg v. Georgia*, 428 U. S., at 197, the rule in *Lockett* recognizes that "justice . . . requires . . . that there be taken into account the circumstances of the offense together with the character and propensities of the offender." *Pennsylvania v. Ashe*, 302 U. S. 51, 55 (1937). By holding that the sentencer in capital cases must be permitted to consider any relevant mitigating factor, the rule in *Lockett* recognizes that a consistency produced by ignoring individual differences is a false consistency.

III

We now apply the rule in *Lockett* to the circumstances of this case. The trial judge stated that "in following the law," he could not "consider the fact of this young man's violent background." App. 189. There is no dispute that by "violent background" the trial judge was referring to the mitigating evidence of Eddings' family history.² From this state-

¹ "A process that accords no significance to relevant facets of the character and record of the individual offender or the circumstances of the particular offense excludes from consideration in fixing the ultimate punishment of death the possibility of compassionate or mitigating factors stemming from the diverse frailties of humankind. It treats all persons convicted of a designated offense not as uniquely individual human beings. . . ." 428 U. S., at 304.

² Brief for Respondent 55 ("the inference that can be drawn is that the court did not consider petitioner's juvenile record and family life to be a mitigating circumstance"); Tr. of Oral Arg. 36 ("the trial court did not con-

ment it is clear that the trial judge did not evaluate the evidence in mitigation and find it wanting as a matter of fact, rather he found that *as a matter of law* he was unable even to consider the evidence.

The Court of Criminal Appeals took the same approach. It found that the evidence in mitigation was not relevant because it did not tend to provide a legal excuse from criminal responsibility. Thus the court conceded that Eddings had a "personality disorder," but cast this evidence aside on the basis that "he knew the difference between right and wrong . . . and that is the test of criminal responsibility." *Eddings v. State, supra*, at 1170. Similarly, the evidence of Eddings' family history was "useful in explaining" his behavior, but it did not "excuse" the behavior. From these statements it appears that the Court of Criminal Appeals also considered only that evidence to be mitigating which would tend to support a legal excuse from criminal liability.

We find that the limitations placed by these courts upon the mitigating evidence they would consider violated the rule in *Lockett*.⁹ Just as the state may not by statute preclude

sider the fact of his family background as a mitigating circumstance. . . . the violent background, which I assume he meant was . . . [that Eddings] was subject to some slapping around and some beating by his father." (argument of respondent).

⁹Eddings argued to the Court of Criminal Appeals that imposition of the death penalty in the particular circumstances of his case, and in light of the mitigating factors present, was excessive punishment under the Eighth Amendment. But he did not specifically argue that the trial judge erred in refusing to consider relevant mitigating circumstances in the process of sentencing. In rejecting his claim of excessive punishment, the court examined the aggravating and mitigating circumstances and held that Eddings' family history and emotional disorder were *not* mitigating circumstances that ought to be weighed in the balance. The court's holding that these factors were irrelevant to an inquiry into excessiveness was also a holding that they need not have been considered by the sentencer in imposing capital punishment. Similarly, Eddings' argument in his petition for certiorari that imposition of the death penalty was excessive on the facts of

the sentencer from considering any mitigating factor, neither may the sentencer, refuse to consider, *as a matter of law*, any relevant mitigating evidence. In this instance, it was as if the trial judge had instructed a jury to disregard the mitigating evidence Eddings proffered on his behalf. The sentencer, and the Court of Criminal Appeals on review, may determine the weight to be given relevant mitigating evidence. But they may not give it no weight by excluding such evidence from their consideration.¹⁰

Nor do we doubt that the evidence Eddings offered was

this case comprises the argument that the sentencer erred in refusing to consider relevant mitigating circumstances proffered by him at the sentencing hearing. In short, although neither the opinion of the Court of Appeals nor Eddings' petition for certiorari spoke to our decision in *Lockett* by name, the question of whether the decisions below were consistent with our decision in *Lockett* is properly before us. Our jurisdiction does not depend on citation to book and verse. See, e. g., *New York ex rel. Bryant v. Zimmerman*, 278 U. S. 60, 67 (1928).

Although Eddings' petition for certiorari did not expressly present the *Lockett* issue, his brief in this Court argued it, and the State responded to the argument. Brief for Petitioner 64-67; Brief for Respondent 55-57. The dissenting opinion of the Chief Justice, *ante*, at —, n. 1, states that the courts below were not afforded the opportunity to consider this issue. The fact is, however, that in his petition to the Court of Criminal Appeals for a rehearing, Eddings specifically presented the issue and at some considerable length. See Petition for Re-Hearing and Supporting Brief III, at 10 ("This Court, by its interpretation of mitigating circumstances, has effectively limited the scope of mitigation and that limitation renders the Oklahoma death penalty statute unconstitutional"). The Court of Criminal Appeals denied the petition, stating that it had given it full consideration and had been "fully advised in the premises." See Rule 1.18, Rules of the Court of Criminal Appeals (court will entertain new arguments upon a petition for rehearing). Cf. *Cox v. Cohn*, 420 U. S. 469, 476 (1975). See also *Wood v. Georgia*, — U. S. —, — n. 5 (1981); *Beck v. Alabama*, 447 U. S. 625, 631 n. 6 (1980); *Vachon v. New Hampshire*, 414 U. S. 478, 479 n. 3 (1974).

¹⁰We note that the Oklahoma death penalty statute permits the defendant to present evidence "as to any mitigating circumstance." Okla. Stat., Tit. 21, § 701.10. *Lockett* requires the sentencer to listen.

relevant mitigating evidence. Eddings was a youth of 16 years at the time of the murder. Evidence of a difficult family history and of emotional disturbance is typically introduced by defendants in mitigation. See *McGautha v. California*, 402 U. S. 183, 187-188 and 193 (1971). In some cases, such evidence properly may be given little weight. But when the defendant was 16 years old at the time of the offense there can be no doubt that evidence of a turbulent family history, of beatings by a harsh father, and of severe emotional disturbance is ~~of the utmost relevance and importance.~~

particularly relevant.

The trial judge recognized that youth must be considered a relevant mitigating factor. But youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage.¹¹ Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults.¹² Particu-

¹¹ "Adolescents everywhere, from every walk of life, are often dangerous to themselves and to others." The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 41 (1967). "[A]dolescents, particularly in the early and middle teen years, are more vulnerable, more impulsive, and less self-disciplined than adults. Crimes committed by youths may be just as harmful to victims as those committed by older persons, but they deserve less punishment because adolescents may have less capacity to control their conduct and to think in long-range terms than adults. Moreover, youth crime as such is not exclusively the offender's fault; offenses by the young also represent a failure of family, school, and the social system, which share responsibility for the development of America's youth." Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, *Confronting Youth Crime* 7 (1978).

¹² As Justice Frankfurter stated, "[c]hildren have a very special place in life which law should reflect." *May v. Anderson*, 345 U. S. 528, 536 (1953) (Frankfurter, J., concurring). And indeed the law does reflect this special place. Every state in the country makes some separate provision for juvenile offenders. See *In re Gault*, 387 U. S. 1, 14 (1967).

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Even the normal 16 year old customarily lacks the maturity of an adult. In this case, Eddings was not a normal 16 year old; he had been deprived of the care, concern and paternal attention that children deserve. On the contrary, ~~he~~ ^{serious} was a juvenile with ~~severe~~ emotional problems, and had been raised in a neglectful, sometimes even violent, family background. In addition, there was testimony that Eddings' mental and emotional development were at a level several years below his chronological age. All of this does not suggest an absence of responsibility for the crime of murder, deliberately committed in this case. ^{it is not disputed that} Rather, it is to say that just as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be ~~given the closest attention~~ ^{duly considered in} in sentencing.

We add that no court can be

^{unaware of the extent to which minors engage increasingly in violent crime. See, e. g., National Advisory Committee on Criminal Justice Standards and Goals, Juvenile Justice and Delinquency Prevention, Report of the Task Force on Juvenile Justice and Delinquency Prevention, 3 (1976). Nor do we suggest an absence of legal responsibility. We are concerned here with the severity of the ultimate penalty: the death sentence imposed for the crime of murder by an emotionally disturbed youth with a disturbed child's immaturity.}

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See C. G. n 9

remanded for further proceedings not inconsistent with this opinion.

So ordered.

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: _____

Recirculated: JAN 4 1982

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-5727

MONTY LEE EDDINGS, PETITIONER *v.* OKLAHOMA

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL
APPEALS OF OKLAHOMA

[January —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

Petitioner Monty Lee Eddings was convicted of first degree murder and sentenced to death. Because this sentence was imposed without "the type of individualized consideration of mitigating factors . . . required by the Eighth and Fourteenth Amendments in capital cases," *Lockett v. Ohio*, 438 U. S. 586, 606 (1978) (opinion of BURGER, C.J.), we reverse.

I

On April 4, 1977, Eddings, a 16 year old youth, and several younger companions ran away from their Missouri homes. They travelled in a car owned by Eddings' brother, and drove without destination or purpose in a southwesterly direction eventually reaching the Oklahoma turnpike. Eddings had in the car a shotgun and several rifles he had taken from his father. After he momentarily lost control of the car, he was signalled to pull over by Officer Crabtree of the Oklahoma Highway Patrol. Eddings did so, and when the Officer approached the car, Eddings stuck a loaded shotgun out of the window and fired, killing the Officer.

Because Eddings was a juvenile, the State moved to have him certified to stand trial as an adult. Finding that there was prosecutive merit to the complaint and that Eddings was not amenable to rehabilitation within the juvenile system, the

trial court granted the motion. The ruling was affirmed on appeal. *Matter of M.E.*, 584 P. 2d 1340 (Okla. Crim. App. 1978), *cert denied*, 436 U. S. 921 (1978). Eddings was then charged with murder in the first degree, and the District Court of Creek County found him guilty upon his plea of *nolo contendere*.

The Oklahoma death penalty statute provides, in pertinent part:

"Upon conviction . . . of guilt of a defendant of murder in the first degree, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. . . . In the sentencing proceeding, evidence may be presented as to *any mitigating circumstances* or as to any of the aggravating circumstances enumerated in this act." Okla. Stat., Tit. 21, § 701.10 (emphasis added).

Section 701.12 lists seven separate aggravating circumstances; the statute nowhere defines what is meant by "any mitigating circumstances."

At the sentencing hearing, the State alleged three of the aggravating circumstances enumerated in the statute: that the murder was especially heinous, atrocious, or cruel, that the crime was committed for the purpose of avoiding or preventing a lawful arrest, and that there was a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society. Okla. Stat., Tit. 21, § 701.12(4), (5), and (7).

In mitigation, Eddings presented substantial evidence at the hearing of his troubled youth. The testimony of his supervising Juvenile Officer indicated that Eddings had been raised without proper guidance. His parents were divorced when he was five, and until he was 14 Eddings lived with his mother without rules or supervision. App. 109. There is the suggestion that Eddings' mother was an alcoholic and possibly a prostitute. App. 110-111. By the time Eddings

was 14 he no longer could be controlled, and his mother sent him to live with his father. But neither could the father control the boy. Attempts to reason and talk gave way to physical punishment. The Juvenile Officer testified that Eddings was frightened and bitter, that his father overreacted and used excessive physical punishment: "Mr. Eddings found the only thing that he thought was effectful with the boy was actual punishment, or physical violence—hitting with a strap or something like this."¹ App. 121.

Testimony from other witnesses indicated that Eddings was emotionally disturbed in general and at the time of the crime, and that his mental and emotional development were at a level several years below his age. App. 134, 149, and 173. A state psychologist stated that Eddings had a sociopathic or anti-social personality and that approximately 30% of youths suffering from such a disorder grew out of it as they aged. App. 137 and 139. A sociologist specializing in juvenile offenders testified that Eddings was treatable. App. 149. A psychiatrist testified that Eddings could be rehabilitated by intensive therapy over a 15 to 20 year period. App. 181. He testified further that Eddings "did pull the trigger, he did kill someone, but I don't even think he knew that he was doing it."² The psychiatrist suggested that, if treated, Eddings would no longer pose a serious threat to society. App. 180-181.

¹ There was evidence that immediately after the shooting Eddings said "I would rather have shot an Officer than go back to where I live." App. 121.

² The psychiatrist suggested that, at the time of the murder, Eddings was in his own mind shooting his stepfather—a policeman who had been married to his mother for a brief period when Eddings was seven. The psychiatrist stated "I think that given the circumstances and the facts of his life, and the facts of his arrested development, he acted as a seven year old seeking revenge and rebellion; and the act—he did pull the trigger, he did kill someone, but I don't even think he knew that he was doing it." App. 172.

At the conclusion of all the evidence, the trial judge weighed the evidence of aggravating and mitigating circumstances. He found that the State had proved each of the three alleged aggravating circumstances beyond a reasonable doubt.² Turning to the evidence of mitigating circumstances, the judge found that Eddings' youth was a mitigating factor of great weight: "I have given very serious consideration to the youth of the Defendant when this particular crime was committed. Should I fail to do this, I think I would not be carrying out my duty." App. 188-189. But he would not consider in mitigation the circumstances of Eddings' unhappy upbringing and emotional disturbance: "... the Court cannot be persuaded entirely by the ... fact that the youth was sixteen years old when this heinous crime was committed. *Nor can the Court in following the law, in my opinion, consider the fact of this young man's violent background.*" App. 189 (emphasis added). Finding that the only mitigating circumstance was Eddings' youth and finding further that this circumstance could not outweigh the

² The trial judge found first that the crime was "heinous, atrocious, and cruel" because "designed to inflict a high degree of pain . . . in utter indifference to the rights of Patrolman Crabtree." App. 187. Second, the judge found that the crime was "committed for the purpose of avoiding or preventing a lawful arrest or prosecution." App. 187-188. The evidence was sufficient to indicate that at the time of the offense Eddings did not wish to be returned to Missouri and that in stopping the car the Officer's intent was to make a lawful arrest. Finally, the trial judge found that Eddings posed a continuing threat of violence to society. There was evidence that at one point on the day of the murder, after Eddings had been taken to the county jail, he told two officers that "if he was loose . . . he would shoot" them all. App. 77. There was also evidence that at another time, when an Officer refused to turn off the light in Eddings' cell, Eddings became angry and threatened the Officer: "Now I have shot one of you people, and I'll get you too if you don't turn this light out." App. 103. Based on these two "spontaneous utterances," app. 188, the trial judge found a strong likelihood that Eddings would again commit a criminal act of violence if released.

aggravating circumstances present, the judge sentenced Eddings to death.

The Court of Criminal Appeals affirmed the sentence of death. *Eddings v. State*, 616 P. 2d 1159 (Okla. Crim. App. 1980). It found that each of the aggravating circumstances alleged by the State had been present.⁴ It recited the mitigating evidence presented by Eddings in some detail, but in the end it agreed with the trial court that only the fact of Eddings' youth was properly considered as a mitigating circumstance:

"[Eddings] also argues his mental state at the time of the murder. He stresses his family history in saying he was suffering from severe psychological and emotional disorders, and that the killing was in actuality an inevitable product of the way he was raised. There is no doubt that the petitioner has a personality disorder. But all the evidence tends to show that he knew the difference between right and wrong at the time he pulled the trigger, and that is the test of criminal responsibility in this State. [citation] For the same reason, the petitioner's family history is useful in explaining why he behaved the way he did, but it does not excuse his behavior." *Id.*, at 1170.

II

In *Lockett v. Ohio*, 438 U. S. 586 (1978), CHIEF JUSTICE BURGER, writing for the plurality, stated the rule that we apply today:⁵

⁴We understand the Court of Criminal Appeals to hold that the murder of a police officer in the performance of his duties is "heinous, atrocious, and cruel" under the Oklahoma statute. See *Roberts v. Louisiana*, 431 U. S. 633, 636 (1977). However, we doubt that the trial judge's understanding and application of this aggravating circumstance conformed to that degree of certainty required by our decision in *Godfrey v. Georgia*, 446 U. S. 420 (1980). See n. 3, *supra*.

⁵Because we decide this case on the basis of *Lockett v. Ohio*, 438 U. S.

"[W]e conclude that the Eighth and Fourteenth Amendments require that the sentencer . . . not be precluded from considering, as a *mitigating factor*, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." *Id.*, at 604 (emphasis in original).

Recognizing "that the imposition of death by public authority is . . . profoundly different from all other penalties," the plurality held that the sentencer must be free to give "independent mitigating weight to aspects of the defendant's character and record and to circumstances of the offense proffered in mitigation. . . ." *Id.*, at 605. Because the Ohio death penalty statute only permitted consideration of three mitigating circumstances, the Court found the statute to be invalid.

As THE CHIEF JUSTICE explained, the rule in *Lockett* is the product of a considerable history reflecting the law's effort to develop a system of capital punishment at once consistent and principled but also humane and sensible to the uniqueness of the individual. Since the early days of the common law, the legal system has struggled to accommodate these twin objectives. Thus, the common law began by treating all criminal homicides as capital offenses, with a mandatory sentence of death. Later it allowed exceptions, first through an exclusion for those entitled to claim benefit of clergy and then by limiting capital punishment to murders upon "malice prepensed." In this country we attempted to soften the rigor of the system of mandatory death sentences we inherited from England, first by grading murder into different degrees of which only murder of the first degree was a capital offense and then by committing use of the death pen-

586 (1978), we do not reach the question of whether—in light of contemporary standards—the Eighth Amendment forbids the execution of a defendant who was 16 at the time of the offense. Cf. *Bell v. Ohio*, 438 U. S. 637 (1978).

alty to the absolute discretion of the jury. By the time of our decision in *Furman v. Georgia*, 408 U. S. 238 (1972), the country had moved so far from a mandatory system that the imposition of capital punishment frequently had become arbitrary and capricious.

Beginning with *Furman*, the Court has attempted to provide standards for a constitutional death penalty that would serve both goals of measured, consistent application and fairness to the accused. Thus, in *Gregg v. Georgia*, 428 U. S. 153 (1976), the plurality held that the danger of an arbitrary and capricious death penalty could be met "by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance." *Id.*, at 195. By its requirement that the jury find one of the aggravating circumstances listed in the death penalty statute, and by its direction to the jury to consider "any mitigating circumstances," the Georgia statute properly confined and directed the jury's attention to the circumstances of the particular crime and to "the characteristics of the person who committed the crime. . . ." *Id.*, at 197.¹

Similarly, in *Woodson v. North Carolina*, 428 U. S. 280 (1976), the plurality held that mandatory death sentencing was not a permissible response to the problem of arbitrary jury discretion. As the history of capital punishment had shown, such an approach to the problem of discretion could not succeed while the Eighth Amendment required that the individual be given his due: "the fundamental respect for humanity underlying the Eighth Amendment . . . requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a

¹ "[T]he jury's attention is directed to the characteristics of the person who committed the crime: . . . Are there any special facts about this defendant that mitigate against imposing capital punishment (*e. g.*, his youth, the extent of his cooperation with the police, his emotional state at the time of the crime)." 428 U. S., at 197.

constitutionally indispensable part of the process of inflicting the penalty of death." *Id.*, at 304.⁷ See *Roberts (Harry) v. Louisiana*, 431 U. S. 633 (1977); *Roberts (Stanislaus) v. Louisiana*, 428 U. S. 325 (1976).

Thus, the rule in *Lockett* followed from the earlier decisions of the Court and from the Court's insistence that capital punishment be imposed fairly, and with reasonable consistency, or not at all. By requiring that the sentencer be permitted to focus "on the characteristics of the person who committed the crime," *Gregg v. Georgia*, 428 U. S., at 197, the rule in *Lockett* recognizes that "justice . . . requires . . . that there be taken into account the circumstances of the offense together with the character and propensities of the offender." *Pennsylvania v. Ashe*, 302 U. S. 51, 55 (1937). By holding that the sentencer in capital cases must be permitted to consider any relevant mitigating factor, the rule in *Lockett* recognizes that a consistency produced by ignoring individual differences is a false consistency.

III

We now apply the rule in *Lockett* to the circumstances of this case. The trial judge stated that "in following the law," he could not "consider the fact of this young man's violent background." App. 189. There is no dispute that by "violent background" the trial judge was referring to the mitigating evidence of Eddings' family history.⁸ From this state-

⁷ "A process that accords no significance to relevant facets of the character and record of the individual offender or the circumstances of the particular offense excludes from consideration in fixing the ultimate punishment of death the possibility of compassionate or mitigating factors stemming from the diverse frailties of humankind. It treats all persons convicted of a designated offense not as uniquely individual human beings. . . ." 428 U. S., at 304.

⁸ Brief for Respondent 55 ("the inference that can be drawn is that the court did not consider petitioner's juvenile record and family life to be a mitigating circumstance"); Tr. of Oral Arg. 36 ("the trial court did not con-

ment it is clear that the trial judge did not evaluate the evidence in mitigation and find it wanting as a matter of fact, rather he found that *as a matter of law* he was unable even to consider the evidence.

The Court of Criminal Appeals took the same approach. It found that the evidence in mitigation was not relevant because it did not tend to provide a legal excuse from criminal responsibility. Thus the court conceded that Eddings had a "personality disorder," but cast this evidence aside on the basis that "he knew the difference between right and wrong . . . and that is the test of criminal responsibility." *Eddings v. State, supra*, at 1170. Similarly, the evidence of Eddings' family history was "useful in explaining" his behavior, but it did not "excuse" the behavior. From these statements it appears that the Court of Criminal Appeals also considered only that evidence to be mitigating which would tend to support a legal excuse from criminal liability.

We find that the limitations placed by these courts upon the mitigating evidence they would consider violated the rule in *Lockett*.⁶ Just as the state may not by statute preclude

sider the fact of his family background as a mitigating circumstance. . . . the violent background, which I assume he meant was . . . (that Eddings) was subject to some slapping around and some beating by his father.") (argument of respondent).

⁶Eddings argued to the Court of Criminal Appeals that imposition of the death penalty in the particular circumstances of his case, and in light of the mitigating factors present, was excessive punishment under the Eighth Amendment. But he did not specifically argue that the trial judge erred in refusing to consider relevant mitigating circumstances in the process of sentencing. In rejecting his claim of excessive punishment, the court examined the aggravating and mitigating circumstances and held that Eddings' family history and emotional disorder were not mitigating circumstances that ought to be weighed in the balance. The court's holding that these factors were irrelevant to an inquiry into excessiveness was also a holding that they need not have been considered by the sentencer in imposing capital punishment. Similarly, Eddings' argument in his petition for certiorari that imposition of the death penalty was excessive on the facts of

the sentencer from considering any mitigating factor, neither may the sentencer, refuse to consider, as a matter of law, any relevant mitigating evidence. In this instance, it was as if the trial judge had instructed a jury to disregard the mitigating evidence Eddings proffered on his behalf. The sentencer, and the Court of Criminal Appeals on review, may determine the weight to be given relevant mitigating evidence. But they may not give it no weight by excluding such evidence from their consideration.¹⁰

Nor do we doubt that the evidence Eddings offered was

this case comprises the argument that the sentencer erred in refusing to consider relevant mitigating circumstances proffered by him at the sentencing hearing. In short, although neither the opinion of the Court of Appeals nor Eddings' petition for certiorari spoke to our decision in *Lockett* by name, the question of whether the decisions below were consistent with our decision in *Lockett* is properly before us. Our jurisdiction does not depend on citation to book and verse. See, e. g., *New York ex rel. Bryant v. Zimmerman*, 278 U. S. 60, 67 (1928).

Although Eddings' petition for certiorari did not expressly present the *Lockett* issue, his brief in this Court argued it, and the State responded to the argument. Brief for Petitioner 64-67; Brief for Respondent 55-57. The dissenting opinion of the Chief Justice, *ante*, at —, n. 1, states that the courts below were not afforded the opportunity to consider this issue. The fact is, however, that in his petition to the Court of Criminal Appeals for a rehearing, Eddings specifically presented the issue and at some considerable length. See Petition for Re-Hearing and Supporting Brief III, at 10 ("This Court, by its interpretation of mitigating circumstances, has effectively limited the scope of mitigation and that limitation renders the Oklahoma death penalty statute unconstitutional"). The Court of Criminal Appeals denied the petition, stating that it had given it full consideration and had been "fully advised in the premises." See Rule 1.18, Rules of the Court of Criminal Appeals (court will entertain new arguments upon a petition for rehearing). Cf. *Cox v. Cohn*, 420 U. S. 469, 476 (1975). See also *Wood v. Georgia*, — U. S. —, — n. 5 (1981); *Beck v. Alabama*, 447 U. S. 625, 631 n. 6 (1980); *Vachon v. New Hampshire*, 414 U. S. 478, 479 n. 3 (1974).

¹⁰ We note that the Oklahoma death penalty statute permits the defendant to present evidence "as to any mitigating circumstance." Okla. Stat., Tit. 21, § 701.10. *Lockett* requires the sentencer to listen.

relevant mitigating evidence. Eddings was a youth of 16 years at the time of the murder. Evidence of a difficult family history and of emotional disturbance is typically introduced by defendants in mitigation. See *McGautha v. California*, 402 U. S. 183, 187-188 and 193 (1971). In some cases, such evidence properly may be given little weight. But when the defendant was 16 years old at the time of the offense there can be no doubt that evidence of a turbulent family history, of beatings by a harsh father, and of severe emotional disturbance is of the utmost relevance and importance.

The trial judge recognized that youth must be considered a relevant mitigating factor. But youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage.¹¹ Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults.¹² Particu-

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¹² As Justice Frankfurter stated, "[c]hildren have a very special place in life which law should reflect." *May v. Anderson*, 345 U. S. 528, 536 (1953) (Frankfurter, J., concurring). And indeed the law does reflect this special place. Every state in the country makes some separate provision for juvenile offenders. See *In re Gault*, 387 U. S. 1, 14 (1967).

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Even the normal 16 year old customarily lacks the maturity of an adult. In this case, Eddings was not a normal 16 year old; he had been deprived of the care, concern and paternal attention that children deserve. On the contrary, he was a juvenile with severe emotional problems, and had been raised in a neglectful, sometimes even violent, family background. In addition, there was testimony that Eddings' mental and emotional development were at a level several years below his chronological age. All of this does not suggest an absence of responsibility for the crime of murder, deliberately committed in this case.¹³ Rather, it is to say that just as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be given the closest attention in sentencing.

On remand, the state courts must consider this evidence and weigh it against the evidence of the aggravating circumstances. We do not weigh the evidence for them. We require only that they consider all of the relevant evidence proffered by Eddings in mitigation.

Accordingly, the judgment is reversed to the extent that it sustains the imposition of the death penalty, and the case is

¹³ We are not unaware of the extent to which minors engage increasingly in violent crime. See, e. g., National Advisory Committee on Criminal Justice Standards and Goals, *Juvenile Justice and Delinquency Prevention*, Report of the Task Force on Juvenile Justice and Delinquency Prevention, 3 (1976). Nor do we suggest an absence of legal responsibility. We are concerned here with the severity of the ultimate penalty: the death sentence imposed for the crime of murder by an emotionally disturbed youth with a disturbed child's immaturity.

remanded for further proceedings not inconsistent with this opinion.

So ordered.

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 4, 1982

Re: No. 80-5727 - Eddings v. Oklahoma

Dear Chief:

I, too, join your dissent in this case.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 5, 1982

Re: No. 80-5727 Eddings v. Oklahoma

Dear Chief:

Please join me in your dissenting opinion in this case.

Sincerely,

WHR

The Chief Justice

Copies to the Conference

January 7, 1982

PERSONAL

80-5727 Eddings v. Oklahoma

Dear Sandra:

I have just read with interest your opinion concurring in part and in the judgment in this case.

As this is a capital case that has attracted national attention, I have been hopeful that we could have an unqualified opinion of the Court. I note that you join all of my opinion except the "characterization of the evidence and the weight to be given to it". I had not thought that my opinion characterized the evidence in anyway that encroached on the trial court's prerogative. My review of the evidence seemed necessary to make clear that factors relevant to Lockett were present in this case, and had been put aside by the Oklahoma courts as irrelevant to the sentence of death. I entirely agree with you that the significance and weight of the evidence is to be left to the trial court.

I would be happy to consider changes that might meet your concerns. I could make explicit, for example, that the significance and weight of the evidence is to be determined by the trial court on remand. I say something to this effect on page 12 of the opinion.

I welcome your concurring views, particularly your excellent rebuttal of the Chief Justice's dissent. If you should decide to join the opinion in its entirety, you could say - as we often do - that you write separately to make clear your understanding that consideration of the evidence is for the trial court and also to address more fully some aspects of this important case.

Finally, as this case is here on cert from a state court, I am not sure that Connor v. Finch (cited in your first footnote) would itself support our review of the

Lockett issue. For the reasons stated in the second paragraph of n. 9 (p. 10) of my opinion, it is clear that we do have authority to address the Lockett issue.

This, of course, is a personal note to you and I will, of course, respect whatever you decide to do.

Sincerely,

Justice O'Connor

lfp/ss

January 11, 1982

80-5727 Eddings v. Oklahoma

Dear Sandra:

On the enclosed pages 11 and 12 of the third draft of my opinion in this case, I have made changes in line with our discussion on Saturday.

I believe these are improvements, and I am grateful to you for suggesting them. If you have further suggestions I will be happy to consider them also.

Sincerely,

Justice O'Connor

lfp/ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 11, 1982

No. 80-5727 Eddings v. Oklahoma

Dear Lewis,

I am pleased with the proposed changes. When you circulate them, I will then circulate a revised concurrence, eliminating any objections to your opinion and any references to the characterization of the evidence and the weight to be given it.

Sincerely,

Sandra

Justice Powell

pp 11 + 12
sent to Sandra
on 1/11

Changes at 11412

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

Circulated: _____

Decirculated: JAN 13 1982

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-5727

MONTY LEE EDDINGS, PETITIONER v. OKLAHOMA

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL
APPEALS OF OKLAHOMA

[January —, 1982]

JUSTICE POWELL delivered the opinion of the Court.

Petitioner Monty Lee Eddings was convicted of first degree murder and sentenced to death. Because this sentence was imposed without "the type of individualized consideration of mitigating factors . . . required by the Eighth and Fourteenth Amendments in capital cases," *Lockett v. Ohio*, 438 U. S. 586, 606 (1978) (opinion of BURGER, C.J.), we reverse.

I

On April 4, 1977, Eddings, a 16 year old youth, and several younger companions ran away from their Missouri homes. They travelled in a car owned by Eddings' brother, and drove without destination or purpose in a southwesterly direction eventually reaching the Oklahoma turnpike. Eddings had in the car a shotgun and several rifles he had taken from his father. After he momentarily lost control of the car, he was signalled to pull over by Officer Crabtree of the Oklahoma Highway Patrol. Eddings did so, and when the Officer approached the car, Eddings stuck a loaded shotgun out of the window and fired, killing the Officer.

Because Eddings was a juvenile, the State moved to have him certified to stand trial as an adult. Finding that there was prosecutive merit to the complaint and that Eddings was not amenable to rehabilitation within the juvenile system, the

trial court granted the motion. The ruling was affirmed on appeal. *Matter of M.E.*, 584 P. 2d 1340 (Okla. Crim. App. 1978), *cert denied*, 436 U. S. 921 (1978). Eddings was then charged with murder in the first degree, and the District Court of Creek County found him guilty upon his plea of *nolo contendere*.

The Oklahoma death penalty statute provides, in pertinent part:

"Upon conviction . . . of guilt of a defendant of murder in the first degree, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. . . . In the sentencing proceeding, evidence may be presented as to *any mitigating circumstances* or as to any of the aggravating circumstances enumerated in this act." Okla. Stat., Tit. 21, § 701.10 (emphasis added).

Section 701.12 lists seven separate aggravating circumstances; the statute nowhere defines what is meant by "any mitigating circumstances."

At the sentencing hearing, the State alleged three of the aggravating circumstances enumerated in the statute: that the murder was especially heinous, atrocious, or cruel, that the crime was committed for the purpose of avoiding or preventing a lawful arrest, and that there was a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society. Okla. Stat., Tit. 21, § 701.12(4), (5), and (7).

In mitigation, Eddings presented substantial evidence at the hearing of his troubled youth. The testimony of his supervising Juvenile Officer indicated that Eddings had been raised without proper guidance. His parents were divorced when he was five, and until he was 14 Eddings lived with his mother without rules or supervision. App. 109. There is the suggestion that Eddings' mother was an alcoholic and possibly a prostitute. App. 110-111. By the time Eddings

was 14 he no longer could be controlled, and his mother sent him to live with his father. But neither could the father control the boy. Attempts to reason and talk gave way to physical punishment. The Juvenile Officer testified that Eddings was frightened and bitter, that his father overreacted and used excessive physical punishment: "Mr. Eddings found the only thing that he thought was effectful with the boy was actual punishment, or physical violence—hitting with a strap or something like this."¹ App. 121.

Testimony from other witnesses indicated that Eddings was emotionally disturbed in general and at the time of the crime, and that his mental and emotional development were at a level several years below his age. App. 134, 149, and 173. A state psychologist stated that Eddings had a sociopathic or anti-social personality and that approximately 30% of youths suffering from such a disorder grew out of it as they aged. App. 137 and 139. A sociologist specializing in juvenile offenders testified that Eddings was treatable. App. 149. A psychiatrist testified that Eddings could be rehabilitated by intensive therapy over a 15 to 20 year period. App. 181. He testified further that Eddings "did pull the trigger, he did kill someone, but I don't even think he knew that he was doing it."² The psychiatrist suggested that, if treated, Eddings would no longer pose a serious threat to society. App. 180-181.

¹ There was evidence that immediately after the shooting Eddings said "I would rather have shot an Officer than go back to where I live." App. 121.

² The psychiatrist suggested that, at the time of the murder, Eddings was in his own mind shooting his stepfather—a policeman who had been married to his mother for a brief period when Eddings was seven. The psychiatrist stated "I think that given the circumstances and the facts of his life, and the facts of his arrested development, he acted as a seven year old seeking revenge and rebellion; and the act—he did pull the trigger, he did kill someone, but I don't even think he knew that he was doing it." App. 172.

At the conclusion of all the evidence, the trial judge weighed the evidence of aggravating and mitigating circumstances. He found that the State had proved each of the three alleged aggravating circumstances beyond a reasonable doubt.³ Turning to the evidence of mitigating circumstances, the judge found that Eddings' youth was a mitigating factor of great weight: "I have given very serious consideration to the youth of the Defendant when this particular crime was committed. Should I fail to do this, I think I would not be carrying out my duty." App. 188-189. But he would not consider in mitigation the circumstances of Eddings' unhappy upbringing and emotional disturbance: "... the Court cannot be persuaded entirely by the ... fact that the youth was sixteen years old when this heinous crime was committed. *Nor can the Court in following the law, in my opinion, consider the fact of this young man's violent background.*" App. 189 (emphasis added). Finding that the only mitigating circumstance was Eddings' youth and finding further that this circumstance could not outweigh the

³The trial judge found first that the crime was "heinous, atrocious, and cruel" because "designed to inflict a high degree of pain ... in utter indifference to the rights of Patrolman Crabtree." App. 187. Second, the judge found that the crime was "committed for the purpose of avoiding or preventing a lawful arrest or prosecution." App. 187-188. The evidence was sufficient to indicate that at the time of the offense Eddings did not wish to be returned to Missouri and that in stopping the car the Officer's intent was to make a lawful arrest. Finally, the trial judge found that Eddings posed a continuing threat of violence to society. There was evidence that at one point on the day of the murder, after Eddings had been taken to the county jail, he told two officers that "if he was loose ... he would shoot" them all. App. 77. There was also evidence that at another time, when an Officer refused to turn off the light in Eddings' cell, Eddings became angry and threatened the Officer: "Now I have shot one of you people, and I'll get you too if you don't turn this light out." App. 103. Based on these two "spontaneous utterances," app. 188, the trial judge found a strong likelihood that Eddings would again commit a criminal act of violence if released.

aggravating circumstances present, the judge sentenced Eddings to death.

The Court of Criminal Appeals affirmed the sentence of death. *Eddings v. State*, 616 P. 2d 1159 (Okla. Crim. App. 1980). It found that each of the aggravating circumstances alleged by the State had been present.⁴ It recited the mitigating evidence presented by Eddings in some detail, but in the end it agreed with the trial court that only the fact of Eddings' youth was properly considered as a mitigating circumstance:

"[Eddings] also argues his mental state at the time of the murder. He stresses his family history in saying he was suffering from severe psychological and emotional disorders, and that the killing was in actuality an inevitable product of the way he was raised. There is no doubt that the petitioner has a personality disorder. But all the evidence tends to show that he knew the difference between right and wrong at the time he pulled the trigger, and that is the test of criminal responsibility in this State. [citation] For the same reason, the petitioner's family history is useful in explaining why he behaved the way he did, but it does not excuse his behavior." *Id.*, at 1170.

II

In *Lockett v. Ohio*, 438 U. S. 586 (1978), CHIEF JUSTICE BURGER, writing for the plurality, stated the rule that we apply today:⁵

⁴We understand the Court of Criminal Appeals to hold that the murder of a police officer in the performance of his duties is "heinous, atrocious, and cruel" under the Oklahoma statute. See *Roberts v. Louisiana*, 431 U. S. 632, 636 (1977). However, we doubt that the trial judge's understanding and application of this aggravating circumstance conformed to that degree of certainty required by our decision in *Godfrey v. Georgia*, 446 U. S. 420 (1980). See n. 8, *supra*.

⁵Because we decide this case on the basis of *Lockett v. Ohio*, 438 U. S.

"[W]e conclude that the Eighth and Fourteenth Amendments require that the sentencer . . . not be precluded from considering, *as a mitigating factor*, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." *Id.*, at 604 (emphasis in original).

Recognizing "that the imposition of death by public authority is . . . profoundly different from all other penalties," the plurality held that the sentencer must be free to give "independent mitigating weight to aspects of the defendant's character and record and to circumstances of the offense proffered in mitigation. . . ." *Id.*, at 605. Because the Ohio death penalty statute only permitted consideration of three mitigating circumstances, the Court found the statute to be invalid.

As THE CHIEF JUSTICE explained, the rule in *Lockett* is the product of a considerable history reflecting the law's effort to develop a system of capital punishment at once consistent and principled but also humane and sensible to the uniqueness of the individual. Since the early days of the common law, the legal system has struggled to accommodate these twin objectives. Thus, the common law began by treating all criminal homicides as capital offenses, with a mandatory sentence of death. Later it allowed exceptions, first through an exclusion for those entitled to claim benefit of clergy and then by limiting capital punishment to murders upon "malice prepensed." In this country we attempted to soften the rigor of the system of mandatory death sentences we inherited from England, first by grading murder into different degrees of which only murder of the first degree was a capital offense and then by committing use of the death pen-

586 (1978), we do not reach the question of whether—in light of contemporary standards—the Eighth Amendment forbids the execution of a defendant who was 16 at the time of the offense. *Cf. Bell v. Ohio*, 438 U. S. 637 (1978).

alty to the absolute discretion of the jury. By the time of our decision in *Furman v. Georgia*, 408 U. S. 238 (1972), the country had moved so far from a mandatory system that the imposition of capital punishment frequently had become arbitrary and capricious.

Beginning with *Furman*, the Court has attempted to provide standards for a constitutional death penalty that would serve both goals of measured, consistent application and fairness to the accused. Thus, in *Gregg v. Georgia*, 428 U. S. 153 (1976), the plurality held that the danger of an arbitrary and capricious death penalty could be met "by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance." *Id.*, at 195. By its requirement that the jury find one of the aggravating circumstances listed in the death penalty statute, and by its direction to the jury to consider "any mitigating circumstances," the Georgia statute properly confined and directed the jury's attention to the circumstances of the particular crime and to "the characteristics of the person who committed the crime. . . ." *Id.*, at 197.*

Similarly, in *Woodson v. North Carolina*, 428 U. S. 280 (1976), the plurality held that mandatory death sentencing was not a permissible response to the problem of arbitrary jury discretion. As the history of capital punishment had shown, such an approach to the problem of discretion could not succeed while the Eighth Amendment required that the individual be given his due: "the fundamental respect for humanity underlying the Eighth Amendment . . . requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a

* "[T]he jury's attention is directed to the characteristics of the person who committed the crime: . . . Are there any special facts about this defendant that mitigate against imposing capital punishment (*e. g.*, his youth, the extent of his cooperation with the police, his emotional state at the time of the crime)." 428 U. S., at 197.

constitutionally indispensable part of the process of inflicting the penalty of death." *Id.*, at 304.⁷ See *Roberts (Harry) v. Louisiana*, 431 U. S. 633 (1977); *Roberts (Stanislaus) v. Louisiana*, 428 U. S. 325 (1976).

Thus, the rule in *Lockett* followed from the earlier decisions of the Court and from the Court's insistence that capital punishment be imposed fairly, and with reasonable consistency, or not at all. By requiring that the sentencer be permitted to focus "on the characteristics of the person who committed the crime," *Gregg v. Georgia*, 428 U. S., at 197, the rule in *Lockett* recognizes that "justice . . . requires . . . that there be taken into account the circumstances of the offense together with the character and propensities of the offender." *Pennsylvania v. Ashe*, 302 U. S. 51, 55 (1937). By holding that the sentencer in capital cases must be permitted to consider any relevant mitigating factor, the rule in *Lockett* recognizes that a consistency produced by ignoring individual differences is a false consistency.

III

We now apply the rule in *Lockett* to the circumstances of this case. The trial judge stated that "in following the law," he could not "consider the fact of this young man's violent background." App. 189. There is no dispute that by "violent background" the trial judge was referring to the mitigating evidence of Eddings' family history.⁸ From this state-

⁷ "A process that accords no significance to relevant facets of the character and record of the individual offender or the circumstances of the particular offense excludes from consideration in fixing the ultimate punishment of death the possibility of compassionate or mitigating factors stemming from the diverse frailties of humankind. It treats all persons convicted of a designated offense not as uniquely individual human beings. . . ." 428 U. S., at 304.

⁸ Brief for Respondent 55 ("the inference that can be drawn is that the court did not consider petitioner's juvenile record and family life to be a mitigating circumstance"); Tr. of Oral Arg. 36 ("the trial court did not con-

ment it is clear that the trial judge did not evaluate the evidence in mitigation and find it wanting as a matter of fact, rather he found that *as a matter of law* he was unable even to consider the evidence.

The Court of Criminal Appeals took the same approach. It found that the evidence in mitigation was not relevant because it did not tend to provide a legal excuse from criminal responsibility. Thus the court conceded that Eddings had a "personality disorder," but cast this evidence aside on the basis that "he knew the difference between right and wrong . . . and that is the test of criminal responsibility." *Eddings v. State, supra*, at 1170. Similarly, the evidence of Eddings' family history was "useful in explaining" his behavior, but it did not "excuse" the behavior. From these statements it appears that the Court of Criminal Appeals also considered only that evidence to be mitigating which would tend to support a legal excuse from criminal liability.

We find that the limitations placed by these courts upon the mitigating evidence they would consider violated the rule in *Lockett*.⁹ Just as the state may not by statute preclude

sider the fact of his family background as a mitigating circumstance. . . . the violent background, which I assume he meant was . . . [that Eddings] was subject to some slapping around and some beating by his father.") (argument of respondent).

⁹Eddings argued to the Court of Criminal Appeals that imposition of the death penalty in the particular circumstances of his case, and in light of the mitigating factors present, was excessive punishment under the Eighth Amendment. But he did not specifically argue that the trial judge erred in refusing to consider relevant mitigating circumstances in the process of sentencing. In rejecting his claim of excessive punishment, the court examined the aggravating and mitigating circumstances and held that Eddings' family history and emotional disorder were *not* mitigating circumstances that ought to be weighed in the balance. The court's holding that these factors were irrelevant to an inquiry into excessiveness was also a holding that they need not have been considered by the sentencer in imposing capital punishment. Similarly, Eddings' argument in his petition for certiorari that imposition of the death penalty was excessive on the facts of

the sentencer from considering any mitigating factor, neither may the sentencer, refuse to consider, *as a matter of law*, any relevant mitigating evidence. In this instance, it was as if the trial judge had instructed a jury to disregard the mitigating evidence Eddings proffered on his behalf. The sentencer, and the Court of Criminal Appeals on review, may determine the weight to be given relevant mitigating evidence. But they may not give it no weight by excluding such evidence from their consideration.¹⁰

Nor do we doubt that the evidence Eddings offered was

this case comprises the argument that the sentencer erred in refusing to consider relevant mitigating circumstances proffered by him at the sentencing hearing. In short, although neither the opinion of the Court of Appeals nor Eddings' petition for certiorari spoke to our decision in *Lockett* by name, the question of whether the decisions below were consistent with our decision in *Lockett* is properly before us. Our jurisdiction does not depend on citation to book and verse. See, e. g., *New York ex rel. Bryant v. Zimmerman*, 278 U. S. 60, 67 (1928).

Although Eddings' petition for certiorari did not expressly present the *Lockett* issue, his brief in this Court argued it, and the State responded to the argument. Brief for Petitioner 64-67; Brief for Respondent 55-57. The dissenting opinion of the Chief Justice, *ante*, at —, n. 1, states that the courts below were not afforded the opportunity to consider this issue. The fact is, however, that in his petition to the Court of Criminal Appeals for a rehearing, Eddings specifically presented the issue and at some considerable length. See Petition for Re-Hearing and Supporting Brief III, at 10 ("This Court, by its interpretation of mitigating circumstances, has effectively limited the scope of mitigation and that limitation renders the Oklahoma death penalty statute unconstitutional"). The Court of Criminal Appeals denied the petition, stating that it had given it full consideration and had been "fully advised in the premises." See Rule 1.18, Rules of the Court of Criminal Appeals (court will entertain new arguments upon a petition for rehearing). Cf. *Cox v. Cohn*, 420 U. S. 469, 476 (1975). See also *Wood v. Georgia*, — U. S. —, — n. 5 (1981); *Beck v. Alabama*, 447 U. S. 625, 631 n. 6 (1980); *Vachon v. New Hampshire*, 414 U. S. 478, 479 n. 3 (1974).

¹⁰We note that the Oklahoma death penalty statute permits the defendant to present evidence "as to any mitigating circumstance." Okla. Stat., Tit. 21, § 701.10. *Lockett* requires the sentencer to listen.

relevant mitigating evidence. Eddings was a youth of 16 years at the time of the murder. Evidence of a difficult family history and of emotional disturbance is typically introduced by defendants in mitigation. See *McGautha v. California*, 402 U. S. 183, 187-188 and 193 (1971). In some cases, such evidence properly may be given little weight. But when the defendant was 16 years old at the time of the offense there can be no doubt that evidence of a turbulent family history, of beatings by a harsh father, and of severe emotional disturbance is particularly relevant.

The trial judge recognized that youth must be considered a relevant mitigating factor. But youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage.¹¹ Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults.¹² Particularly "during the formative years of childhood and

¹¹ "Adolescents everywhere, from every walk of life, are often dangerous to themselves and to others." The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 41 (1967). "[A]dolescents, particularly in the early and middle teen years, are more vulnerable, more impulsive, and less self-disciplined than adults. Crimes committed by youths may be just as harmful to victims as those committed by older persons, but they deserve less punishment because adolescents may have less capacity to control their conduct and to think in long-range terms than adults. Moreover, youth crime as such is not exclusively the offender's fault; offenses by the young also represent a failure of family, school, and the social system, which share responsibility for the development of America's youth." Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, *Confronting Youth Crime* 7 (1978).

¹² As Justice Frankfurter stated, "[c]hildren have a very special place in life which law should reflect." *May v. Anderson*, 345 U. S. 528, 536 (1953) (Frankfurter, J., concurring). And indeed the law does reflect this special place. Every state in the country makes some separate provision for juvenile offenders. See *In re Gault*, 387 U. S. 1, 14 (1967).

adolescence, minors often lack the experience, perspective, and judgment" expected of adults. *Bellotti v. Baird*, 443 U. S. 622, 635 (1979).

Even the normal 16 year old customarily lacks the maturity of an adult. In this case, Eddings was not a normal 16 year old; he had been deprived of the care, concern and paternal attention that children deserve. On the contrary, it is not disputed that he was a juvenile with serious emotional problems, and had been raised in a neglectful, sometimes even violent, family background. In addition, there was testimony that Eddings' mental and emotional development were at a level several years below his chronological age. All of this does not suggest an absence of responsibility for the crime of murder, deliberately committed in this case. Rather, it is to say that just as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered in sentencing.

We are not unaware of the extent to which minors engage increasingly in violent crime.¹⁸ Nor do we suggest an absence of legal responsibility where crime is committed by a minor. We are concerned here only with the manner of the imposition of the ultimate penalty: the death sentence imposed for the crime of murder by an emotionally disturbed youth with a disturbed child's immaturity.

On remand, the state courts must consider all relevant mitigating evidence and weigh it against the evidence of the aggravating circumstances. We do not weigh the evidence for them. Accordingly, the judgment is reversed to the extent that it sustains the imposition of the death penalty, and

¹⁸ See, e. g., National Advisory Committee on Criminal Justice Standards and Goals, *Juvenile Justice and Delinquency Prevention*, Report of the Task Force on Juvenile Justice and Delinquency Prevention, 8 (1976).

the case is remanded for further proceedings not inconsistent with this opinion.

So ordered.

P.P. 1, 3,

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

2nd DRAFT

From: Justice O'Connor

SUPREME COURT OF THE UNITED STATES

No. 80-5727

Recirculated:

JAN 15 1982

MONTY LEE EDDINGS, PETITIONER, v. OKLAHOMA

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEAL
OF OKLAHOMA

[January —, 1982]

JUSTICE O'CONNOR, concurring.

I write separately to address more fully the reasons why this case must be remanded in light of *Lockett v. Ohio*, 438 U. S. 586 (1978), which requires the trial court to consider and weigh all of the mitigating evidence concerning the petitioner's family background and personal history.*

Because sentences of death are "qualitatively different" from prison sentences, *Woodson v. North Carolina*, 428 U. S. 280, 305 (1976) (opinion of Stewart, J.), this Court has gone to extraordinary measures to ensure that the prisoner sentenced to be executed is afforded process that will guarantee, as much as is humanly possible, that the sentence was not imposed out of whim, passion, prejudice, or mistake.

*Despite THE CHIEF JUSTICE's argument that we may not consider the *Lockett* issue because it was never fairly presented to the court below, there is precedent for this Court to consider the merits of the issue. In *Wood v. Georgia*, 450 U. S. 261, 265, n. 5 (1981), this Court wrote:

"Even if one considers that the conflict-of-interest question was not technically raised below, there is ample support for a remand required in the interests of justice. See 28 U. S. C. § 2106 (authorizing this Court to 'require such further proceedings to be had as may be just under the circumstances')."

Because the trial court's failure to consider all of the mitigating evidence risks erroneous imposition of the death sentence, in plain violation of *Lockett*, it is our duty to remand this case for resentencing.

Surely, no less can be required when the defendant is a minor. One example of the measures taken is in *Lockett v. Ohio*, 438 U. S. 586 (1978), where a plurality of this Court wrote:

"There is no perfect procedure for deciding in which cases governmental authority should be used to impose death. But a statute that prevents the sentencer in all capital cases from giving independent mitigating weight to aspects of the defendant's character and record and to circumstances of the offense proffered in mitigation creates the risk that the death penalty will be imposed in spite of factors which may call for a less severe penalty. When the choice is between life and death, that risk is unacceptable and incompatible with the commands of the Eighth and Fourteenth Amendments." 438 U. S., at 605 (opinion of BURGER, C. J.).

In order to ensure that the death penalty was not erroneously imposed, the *Lockett* plurality concluded that "the Eighth and Fourteenth Amendments require that the sentencer, in all but the rarest kind of capital case, not be precluded from considering, as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." *Id.*, at 604 (emphasis in original).

In the present case, of course, the relevant Oklahoma statute permits the defendant to present evidence of any mitigating circumstance. See Okla. Stat., Tit. 21, § 701.10. Nonetheless, in sentencing the petitioner (which occurred about one month before *Lockett* was decided), the judge remarked that he could not "in following the law . . . consider the fact of this young man's violent background." App. 189. Although one can reasonably argue that these extemporaneous remarks are of no legal significance, I believe that the reasoning of the plurality opinion in *Lockett* compels a remand so

that we do not "risk that the death penalty will be imposed in spite of factors which may call for a less severe penalty." 438 U. S., at 605.

I disagree with the suggestion in the dissent that remanding this case may serve no useful purpose. Even though the petitioner had an opportunity to present evidence in mitigation of the crime, it appears that the trial judge believed that he could not consider some of the mitigating evidence in imposing sentence. In any event, we may not speculate as to whether the trial judge and the Court of Criminal Appeals actually considered all of the mitigating factors and found them insufficient to offset the aggravating circumstances, or whether the difference between this Court's opinion and the trial court's treatment of the petitioner's evidence is "purely a matter of semantics," as suggested by the dissent. *Woodson* and *Lockett* require us to remove any legitimate basis for finding ambiguity concerning the factors actually considered by the trial court.

THE CHIEF JUSTICE may be correct in concluding that the Court's opinion reflects a decision by some Justices that they would not have imposed the death penalty in this case had they sat as the trial judge. See *ante*, at 10-12. I, however, do not read the Court's opinion either as altering this Court's opinions establishing the constitutionality of the death penalty or as deciding the issue of whether the Constitution permits imposition of the death penalty on an individual who committed a murder at age 16. Rather, by listing in detail some of the circumstances surrounding the petitioner's life, the Court has sought to emphasize the variety of mitigating information that may not have been considered by the trial court in deciding whether to impose the death penalty or some lesser sentence.

EDDINGSS SALLY-POW

This is a capital case, here on certiorari to the Court of Criminal Appeals of Oklahoma.

When Eddings was 16 years old, he shot and killed a state highway patrol officer. At the time, Eddings - with three younger juveniles - was running away from their Missouri homes. He had a history of emotional problems, had been raised in a difficult family situation, and there was testimony that his mental and emotional development were at a level several years below his chronological age.

The Oklahoma capital punishment statute provides, in the sentencing proceeding, that evidence may be presented as to mitigating and aggravating circumstances.

Eddings' age was considered as a mitigating circumstance, but this was viewed as outweighed by aggravating circumstances - primarily the deliberate shooting of a state officer without provocation other than the fact that Eddings had been stopped on a state highway for erratic driving.

*Altho the trial court
admitted evidence*

2.
Although the trial court admitted evidence/as to Eddings' family history/and emotional instability,/it declined to consider these/as mitigating circumstances. The Court of Criminal Appeals agreed,/and the sentence of death was affirmed.

In Lockett v. Ohio we held that the Eighth and Fourteenth Amendments require - in a capital case - that the sentencing authority/not be precluded from considering,/as a mitigating factor,/any aspect of a defendant's character or record.

We think the Oklahoma courts committed error/in failing to consider Eddings' background/in mitigation. We therefore reverse the judgment insofar as it imposed the death penalty,/and remand the case for further proceedings.

~~I add that~~ ^This Court is not unaware/of the extent to which minors/engage increasingly in violent crime. Nor do we suggest an absence of legal responsibility/where crime is committed by a minor. We are concerned in this case/only with the validity of the procedure/by which the death penalty was imposed on an emotionally disturbed/16 year old.

Justices Brennan and O'Connor ^{have} filed concurring opinions. The Chief Justice has filed a dissenting opinion in which Justices White, Blackmun and Rehnquist join.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 20, 1982

Memorandum to the Conference

There are three cases being held for the decision in 80-5727, Eddings v. Oklahoma:

Legare v. Zant---80-6725 Cert. to Georgia SC

This case is here after the Georgia courts denied petitioner's effort to gain post-conviction relief. Petitioner argues that the jury was prevented from considering his youth as a mitigating factor. Petitioner was 17 years of age at the time of the killing. The prosecutor, on voir dire, asked nearly ever prospective juror whether the defendant's youth would have any effect on the juror's consideration of the death penalty. According to petitioner, the few prospective jurors who said that they would consider the defendant's youth were struck by the state. In closing argument, the prosecutor referred back to his question on voir dire and urged the jury not to consider the defendant's youth. He said:

"I asked each and every one of you that if because of the age of the defendant in this case, you would be more likely to vote against the death penalty for him than you would, say, a thirty year old man ... I asked each one of you and each one of you said no ...

"And you'll have the satisfaction of knowing that you have, in a case where the evidence demanded, not only justified, but demanded the death penalty, if you disconsider his age, disconsider all of those things which you're not supposed to consider...

"Just remember the evidence. ... Push the age of the defendant out of your mind. He may be seventeen years chronologically but he's older than any of us in the ways of evil ..." Pet. at 21.

Furthermore, during the defense counsel's closing argument, the prosecutor objected to his statement to the jury that "if you're going to take a seventeen year old boy and electrocute him, now--where are you going to cut it off,

are you going down to ten years, fourteen years, sixteen years ..." Reply at 5. The prosecutor objected on the grounds that defense counsel was "perfectly well aware that there's a law that sets minimum age on this matter." In Georgia no one under the age of 13 may be executed. The trial judge sustained the objection, saying:

"I think that [defense counsel's] argument is an incorrect principle of law. You have leeway to argue matters of common knowledge, but if you are going to argue them, I think it ought be correct. Ladies and Gentlemen, you've heard the evidence. It's up to you to determine what punishment he is to receive. Do not let any common denominator have any effect upon your responsibility." Reply at 6.

Petitioner suggests that this instruction from the bench may have been understood by the jury as a direction not to consider the defendant's age in mitigation.

In considering petitioner's petition for habeas corpus, the state superior court rejected petitioner's argument that the jury had not been permitted to consider the fact of his youth. The trial court instructed the jury that it could consider "all the evidence received in court" including "the facts and circumstances, if any, in extenuation, mitigation, or aggravation of punishment which may have been submitted to you." The court found that only one prospective juror indicated that she would not be able to impose the death penalty because of the defendant's age, and she was not excused for cause. Finally, although defense counsel made the argument, he did not introduce any mitigating evidence at the sentencing phase of the trial. For these reasons, the superior court rejected petitioner's contention as without merit. The Supreme Court of Georgia denied petitioner's application for a certificate of probable cause to appeal. There has been no §2254 review.

I think that this case is sufficiently close to the situation in Eddings, that the Court should remand the matter in light of Eddings. There appears to be a substantial likelihood that the jury as constituted believed that it could not consider the defendant's age or was free simply to ignore this factor in mitigation. I recommend that the Court grant, vacate, and remand for further consideration in light of Eddings.

High v. Georgia----No. 80-6843 Cert to Georgia SC

This case is here on direct appeal from the Georgia Supreme Court. Petitioner was 17, eleven months, and 10 days old at the time of the crime. Following an armed robbery of a service station, petr and several others took the owner of the station and his 11 year old son--the only witnesses to the robbery--to a secluded wooded area where they shot both of them. The father survived his wounds; the boy did not. On the way to the execution site, petr taunted the child, telling him he was going to die.

Petitioner argues that it violates the eighth amendment to execute a person under age 18. Unlike the situation in Eddings, however, it does not appear from the state court opinion or the papers attached to the cert petition that petr ever tried to place any mitigating factors before the jury. The trial judge instructed the jury to consider any relevant mitigating evidence, and petr makes no argument that the lower courts denied him the opportunity of presenting relevant mitigating evidence concerning his youth or upbringing. The case does not appear to bear any resemblance to Eddings, and I therefore recommend denial.

Roach v. South Carolina----No. 81-5628 Cert to
South Carolina SC

This case is here following rejection of petitioner's effort to gain post-conviction relief in state court. Petitioner participated in an extraordinarily savage double murder of a 17 year old boy and a 14 year old girl. Petitioner was 17 at the time of the murders. The trial judge found that there were 6 mitigating factors including the petitioner's "age or mentality" at the time of the crime. Notwithstanding these factors in mitigation, the judge found that the death penalty was appropriate in the circumstances of the case. The sentence was affirmed on direct appeal, and the state courts refused to disturb it in post-conviction proceedings. There has been no §2254 review.

Although petitioner was 17 at the time of the crime, there is no claim here that petitioner was deprived of the opportunity of presenting factors in mitigation for the sentencer's consideration as there was in Eddings. I therefore recommend denial.

L. F. P.
L.F.P., Jr.

SS

High Court Upsets Death Penalty for Boy, 16, in Slaying of Trooper

Special to The New York Times

WASHINGTON, Jan. 19 — The Supreme Court today overturned a sentence of death imposed by the state courts in Oklahoma on a boy who was 16 years old when he murdered a state trooper.

The 5-to-4 ruling sidestepped the underlying constitutional issue in the case: whether the Eighth Amendment, which prohibits cruel and unusual punishment, ever permits the execution of a juvenile offender.

Instead, the Court, in a majority decision by Associate Justice Lewis F. Powell Jr., ruled that the Oklahoma courts had erred in failing to take the young offender's disturbed emotional state and deprived family background into account as mitigating factors in the decision to impose the death penalty. That conclusion made it unnecessary for the Court to decide the broader constitutional issue. As a result, the decision has no immediate effect on the 16 other Death Row inmates around the country who are under the age of 18.

But if the legal ruling was a narrow one, it was potentially significant as an indication of the Court's current lineup on the capital punishment issue. The

case was the first death penalty case to reach the Court since Sandra Day O'Connor replaced Potter Stewart, who wrote several of the Court's decisions invalidating death sentences. Justice O'Connor joined the majority today and also wrote a separate concurring opinion.

Dispute on Jurisdictional Issue

The ruling sparked an unusually contentious debate between the majority and the dissenters, led by Chief Justice Warren E. Burger, on a jurisdictional issue that has ramifications for the Court beyond the case at hand.

Lawyers for Monty Lee Eddings, the defendant, had mounted a broad Eighth Amendment attack on the application of the death penalty to juveniles, and neither in the lower courts nor in their petition to the Supreme Court did they raise the procedural issue that formed the basis for the majority's opinion.

That lapse, Chief Justice Burger said in a dissenting opinion, should have prevented the Court from ruling on that issue. The Court should have upheld the death sentence, the Chief Justice said. The dissent was joined by Associate Justices Byron R. White, Harry A. Blackmun and William H. Rehnquist.

Addressing the dissent's complaint in a footnote, Justice Powell said that the fact that the issue had not been explicitly raised should not prevent the Court from deciding it. "Our jurisdiction does not depend on citation to book and verse," he wrote.

Differences in Procedures

Appellate courts as a rule decline to decide issues that parties have not raised in the lower courts. But parties before the Supreme Court often try to bring such issues up, and the Justices do not seem to apply a consistent policy on the matter. The debate today seemed to indicate that, at least when capital punishment is at stake, a narrow majority of the Court believes it should not penalize defendants for omissions in the presentation of their case.

The majority ruling today, *Eddings v. Oklahoma*, No. 80-5727, was based on a 1978 Supreme Court decision, *Lockett v. Ohio*. The *Lockett* decision held that in deciding whether to impose a death sentence a court must have before it any evidence the defendant wishes to present on why the death penalty should not be imposed.

In arguing against the death penalty,

the defense lawyers offered as mitigating evidence not only their client's youth but his background as an abused and psychologically disturbed adolescent. The youth was running away from home when he shot and killed a state patrolman who stopped the car while driving.

The trial judge took the youth into consideration but declined to consider the other evidence, a decision that was upheld by the Oklahoma Court of Criminal Appeals.

'Not a Normal 16-Year-Old'

"We find that the limitations by these courts upon the mitigation evidence they would consider violate the rule of *Lockett*," Justice Powell wrote.

The defendant, Justice Powell wrote, was "not a normal 16-year-old; he had been deprived of the care, concern and paternal attention that children deserve."

He concluded: "All of this does suggest an absence of responsibility for the crime of murder, deliberately committed in this case. Rather, it is that just as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be considered in sentencing."

The case now goes back to the Oklahoma courts for a new sentencing proceeding.

In addition to Justice O'Connor, Associate Justices William J. Brennan Jr., Thurgood Marshall and John Paul Stevens joined Justice Powell's majority opinion.

Chief Justice Burger, disputing the majority's conclusion that youthful offenders' disturbances merited special consideration, said, "One might be surprised if a person capable of a cold and unprovoked killing of a police officer did not suffer from some sort of personality disorder."

Death Is Different

The Supreme Court continues its earnest, thus far unavailing search for humane ways to mete out capital punishment. Last week's decision in the case of *Eddings v. Oklahoma* dramatized the uneven progress, and perhaps the futility, of that quest.

Justice Sandra O'Connor provided the most encouraging news. Her crucial fifth vote to overturn the death sentence of a murderer who was 16 at the time of his crime placed her firmly with the Court's moderate, controlling center.

Unwilling to rule out capital punishment in all circumstances, Justice O'Connor nevertheless agreed with her predecessor, Potter Stewart, that the death penalty is "qualitatively different" from prison sentences. Her concurring opinion endorsed "extraordinary measures" to guard against executions "out of whim, passion, prejudice, or mistake."

But the vote was close: four dissenters would still resolve ambiguities in favor of execution. That's a precarious margin when the difference is so great.

No Justice condoned Monty Lee Eddings's crime. Running away from his Missouri home with a group of younger companions, he took his brother's car and his father's shotgun and rifles and drove to Oklahoma, where he momentarily lost control of the car on a turnpike. When his passengers warned that a highway patrol car was nearby, he boasted that if the officer tried to stop him he would "blow him away." He obeyed an order to pull over and, as the

officer approached on foot, stuck a loaded shotgun out the window and shot the officer dead.

Mr. Eddings did not contest his guilt, but pleaded for mercy because of his youth and turbulent history of broken homes and domestic violence. The sentencing judge said he was not persuaded by the argument of youth and added, "Nor can the court in following the law, in my opinion, consider the fact of this young man's violent background."

But the high court had said that in capital cases, justice demands that every mitigating factor be at least considered. Justice Lewis Powell, writing for the majority, called for another sentencing hearing at which the judge must consider that history, even if he finally deems it outweighed by other factors and comes up with the same penalty.

In dissent, Chief Justice Warren Burger found the record "at best ambiguous" as to whether the sentencing judge had ignored or merely discounted the youth's history. The majority thought the matter clear enough; and Justice O'Connor reminded the Chief Justice that "we may not speculate" with so much at stake.

On such fine points and close reasoning pivot large issues of justice and humanity. The Supreme Court undergoes this painful process because most of its members appreciate that death is different. The very care these cases now require suggests that the Court may have to judge every one. Would it not be better to strike down all death penalties than struggle for such fine distinctions?

