Supreme Court inaugurates new term with reactionary death penalty ruling

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On November 13, the Supreme Court in the case of *Ayers v. Belmontes* reinstated a death sentence imposed on a man in the state of California despite evidence that the sentencing verdict resulted from confusion over jury instructions.

The decision, which overturned a ruling of the Ninth Circuit Court of Appeals, was split 5-4. Chief Justice John Roberts and Associate Justices Antonin Scalia, Clarence Thomas, Samuel Alito, and Anthony Kennedy ruled in favor of the death penalty. This was the first decision of the Court in its current term.

The majority opinion, authored by the so-called "swing" Justice Kennedy, is a thoroughly reactionary assault on fundamental due process rights guaranteed under the Constitution. The decision represents a conscious effort on the part of most extreme-right justices on the Court to loosen any restraint on the state's ability to carry out executions.

Fernando Belmontes was convicted of murder in 1982 for the killing of a woman during a burglary attempt. During the penalty phase of the trial, the jury was tasked with deciding whether Belmontes would receive life in prison without the possibility of parole, or the death penalty. The prosecution and the defense were able to present evidence in aggravation and mitigation, respectively.

In addition to the well established precedent guaranteeing the right to a fair trial under the Fourteenth Amendment's Due Process clause, the Supreme Court has made the cornerstone of its capital punishment jurisprudence the Eighth Amendment (which prohibits cruel and unusual punishment) and has imposed as an interpretation of this amendment the right of defendants to present any mitigating evidence to the jury that might warrant a penalty less than death. Because of confusing jury instructions, however, Belmontes' lawyers argued that the jury did not consider all mitigating factors.

The defense introduced into evidence, among other things, the testimony of Belmontes' mother and grandfather who testified about Belmontes' difficult childhood, particularly his abuse at the hands of his alcoholic father.

The primary component of the defense's evidence in mitigation, however, was the prior experience of Belmontes when he was committed to a juvenile correctional program called the California Youth Authority. The defendant testified that during his time with the Youth Authority he underwent a religious conversion to Christianity and achieved a number of positive accomplishments. The defense presented testimony from the Youth Authority chaplain explaining Belmontes' positive influence on other youths during the course of his commitment.

The thrust of the defense argument was that Belmontes had demonstrated that while he was incarcerated he was able to reform himself, and therefore if given a life sentence he could benefit society while imprisoned.

After the penalty evidence was presented, counsel and the court discussed the proposed jury instructions. The defense counsel submitted a request that the jury instructions include a list of the special aggravating factors and a list of the special mitigating factors that were raised by the evidence. Under the requested list of special mitigating factors, the defense sought to include the factors relevant to the evidence of his behavior during previous incarceration.

The trial judge refused defense counsel's request to give the jury a separate list of potential mitigating factors and instead used a list of seven standard sentencing factors that are commonly used, including one—known as factor (k)—that instructed the jury that they could consider "any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime." While this factor is worded as if it is a catchall provision that would include almost anything that is not enumerated in the six other factors, it is in fact nothing of the sort and served to exclude the defense's primary mitigating evidence.

All the factors listed by the judge related to the severity of the crime and would not logically include consideration of the defendant's future behavior. Though the mitigating factors were referred to as examples, the judge declined to inform the jury that they were not limited to consideration of the specific enumerated factors.

The confusion among the jury quickly became evident. After deliberating for a few hours, the jury foreman submitted two written questions to the court: "What happens if we cannot reach a verdict?" and "Can the majority rule on life imprisonment?" These questions clearly reveal that, at this point, a majority of jurors favored a life sentence with a minority faction to the contrary.

The judge responded to the questions with the jury in open court. After informing the jury that their verdict must be unanimous, one of the jurors, Mrs. Hern, asked the judge the following question: "The statement about the aggravation and mitigation of the circumstances, now, that was the listing?" The judge responded saying, "That was the listing, yes, ma'am." Mrs. Hern followed up by asking, "Of those certain factors, we were to decide one or the other and then balance the sheet?" To which the court replied, "That is right. It is a balancing process."

The appellate brief for Belmontes aptly explains the significance of the jury's colloquy with the judge.

The clear import is that Juror Hern wanted confirmation that the list of factors the jury had heard was complete and exhaustive. The trial court gave her and the entire jury exactly that confirmation without any countervailing direction that *all* the evidence presented was

proper for consideration, and that the list of factors was supplied only to *help* the jury consider the evidence, *not* to *limit* the jury's consideration.

As a result of the court's instruction, within twenty-four hours the majority contingent of the jury that was leaning toward a life sentence changed their position and the jury delivered a unanimous verdict of death.

It is significant that just one year after Belmontes' trial, the California Supreme Court recognized the problematic nature of the standard jury instructions and amended them to make clear that the jury could consider any evidence that was presented in court. Despite this fact, the California courts upheld the death sentence of Belmontes.

After exhausting his state court remedies, Belmontes filed a petition for federal *habeas corpus* relief in 1994. The Ninth Circuit Court of Appeals ruled to vacate Belmontes' death sentence, pointing out that "the Eighth Amendment requires a capital jury to consider all relevant mitigating evidence offered by the defendant . . . this broad mandate includes the duty to consider mitigating evidence that relates to a defendant's probable future behavior, especially the likelihood that he would not pose a future danger if spared but incarcerated." The court then cited the trial judge's failure to instruct the jury that it was obligated to consider Belmontes' principal mitigation evidence.

The Supreme Court decision issued on Monday overturns the ruling by the Ninth Circuit. The majority opinion is largely unresponsive to the issues raised on appeal by Belmontes. The majority primarily relied on the case of *Boyde v. California* which previously examined the language of the factor (k) instruction and found that, standing alone, it does not unconstitutionally preclude jurors from considering mitigating evidence unrelated to the crime.

However, as Eric Multhaup, counsel for Belmontes, made clear in his brief and during oral argument, it was not the language of factor (k) alone that violated Belmontes' Eighth and Fourteenth Amendment rights, but rather the "unusual combination of respondent's particular mitigating evidence, a mixture of standard and case specific jury instructions, and a number of mid deliberation juror questions coupled with the trial court's improvised answers" that, taken in combination, deterred the jury "from considering and giving effect to some of the most compelling of respondent's evidence in mitigation."

In fact, *Boyde* serves to bolster the defendant's argument because it holds that the standard for relief in such a case is whether there is "a reasonable probability that the jury has applied the challenged instruction in a way that prevents the consideration of constitutionally relevant evidence." In other words, even if the jurors were properly instructed, one only has to show that there is a "reasonable probability" that the instruction was misapplied and constitutionally relevant evidence was not considered.

Aware of this, the majority of the Supreme Court tried to reason that the jurors "could have disregarded respondent's future potential only if they drew the unlikely inference that the court's instructions transformed all of this favorable testimony into a virtual charade." In other words, there was no reasonable probability that the jury did not consider the mitigating evidence because if the presentation by the defense conflicted with the instruction from the judge, the jurors would certainly ignore the latter!

At best, the majority opinion evidences a complete indifference to the constitutionally guaranteed rights of defendants. As the dissenting opinion pointed out, "the incremental value to California of carrying out a death sentence at this late date is far outweighed by the interest in maintaining confidence in the fairness of any proceeding that results in a State's decision to take the life of one of its citizens."

The WSWS unequivocally opposes the death penalty regardless of the nature of the proceedings. The dissenting opinion, which does not explicitly oppose the death penalty, does however highlight the fact that in this ruling the Supreme Court has moved to eliminate existing constitutional safeguards that restrict the application of the penalty by requiring that any doubt be resolved in favor of the defendant. Clearly in this case there is substantial doubt that the jury properly considered all factors in deciding whether or not to give Belmontes a death sentence.

There is more involved here than mere indifference to such considerations or the fate of one individual. The justices that voted to reinstate Belmontes' death sentence are actively seeking to remove any legal restrictions on the state's ability to incarcerate and execute its citizens. This is demonstrated by the concurring opinion authored by Justices Scalia and Thomas, which went beyond Kennedy's opinion to attack the premise that the defense should be able to present any mitigating evidence it considers relevant. "I adhere to my view that limiting a jury's discretion to consider all mitigating evidence does not violate the Eighth Amendment," the Justices wrote. From the perspective of these reactionary justices, constitutional safeguards merely stand in the way of maintaining social order.

The intention and effect of this legal perspective is to strengthen the more repressive elements of the state apparatus, including the police, the military, and the executioner. In the case of *Hudson v. Michigan*, decided in June, these same five justices abolished the long standing rule that the police had to knock and announce their presence before entering someone's home, and in *Hamdan v. Rumsfeld* formed a minority bloc (minus Kennedy) that sanctioned unfettered executive power in the use of military commissions and the detention of "unlawful enemy combatants."

These judges, who hold nothing but contempt for basic democratic rights, do not emerge out of nowhere; rather, they have been intentionally fostered and promoted by the most right-wing elements of the ruling establishment.

There is a certain social-psychological component to the ruling, with the justices betraying a vindictiveness and enthusiasm at sending Belmontes to his death. The use of the death penalty is itself a barbaric institution, and the zeal with which it is promoted by the highest court in the land—not to mention President Bush himself, who notoriously oversaw the execution of over 150 prisoners while governor of Texas—is an expression of the profound decay of democratic conceptions within the American ruling elite.