

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is 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 Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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KANSAS *v.* MARSH

CERTIORARI TO THE SUPREME COURT OF KANSAS

No. 04–1170. Argued December 7, 2005—Reargued April 25, 2006—
Decided June 26, 2006

Finding three aggravating circumstances that were not outweighed by mitigating circumstances, a Kansas jury convicted respondent Marsh of, *inter alia*, capital murder and sentenced him to death. Marsh claimed on direct appeal that Kan. Stat. Ann. §21–4624(e) establishes an unconstitutional presumption in favor of death by directing imposition of the death penalty when aggravating and mitigating circumstances are in equipoise. Agreeing, the Kansas Supreme Court concluded that §21–4624(e)’s weighing equation violated the Eighth and Fourteenth Amendments and remanded for a new trial.

Held:

1. This Court has jurisdiction to review the Kansas Supreme Court’s judgment under 28 U. S. C. §1257. That provision authorizes review of a State’s final judgment when a state statute’s validity is questioned on federal constitutional grounds, and it permits review even when the state-court proceedings are not complete where the federal claim has been finally decided and later review of the federal issue cannot be had, whatever the case’s outcome, *Cox Broadcasting Corp. v. Cohn*, 420 U. S. 469, 481. Although Marsh will be retried, the State Supreme Court’s determination that the death penalty statute is unconstitutional is final and binding on the lower state courts. Thus, the State will be unable to obtain further review of its law in this case. This Court has deemed lower court decisions final for §1257 purposes in like circumstances, see, *e.g.*, *Florida v. Meyers*, 466 U. S. 380 (*per curiam*). Pp. 3–4.

2. The State Supreme Court’s judgment is not supported by adequate and independent state grounds. Marsh maintains that the judgment was based on state law, the State Supreme Court having previously reviewed the statute in *State v. Kleypas*. However, *Kley-*

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pas itself rested on federal law. In this case, the State Supreme Court chastised the *Kleypas* court for avoiding the constitutional issue, squarely found §21–4624(e) unconstitutional on its face, and overruled *Kleypas* in relevant part. Pp. 4–5.

3. Kansas’ capital sentencing statute is constitutional. Pp. 5–19.

(a) *Walton v. Arizona*, 497 U. S. 639, requires approval of the Kansas statute. There, the Court held that a state death penalty statute may give the defendant the burden to prove that mitigating circumstances outweigh aggravating circumstances. *A fortiori*, Kansas’ death penalty statute, consistent with the Constitution, may direct imposition of the death penalty when the State has proved beyond a reasonable doubt that mitigators do not outweigh aggravators, including where the two are in equipoise. Pp. 5–9.

(b) Even if, as Marsh contends, *Walton* does not directly control here, general principles in this Court’s death penalty jurisprudence lead to the same conclusion. So long as a state system satisfies the requirements of *Furman v. Georgia*, 408 U. S. 238, and *Gregg v. Georgia*, 428 U. S. 153—that a system must rationally narrow the class of death-eligible defendants and must permit a jury to render a reasonable, individualized sentencing determination—a State has a range of discretion in imposing the death penalty, including the manner in which aggravating and mitigating circumstances are weighed. The use of mitigation evidence is a product of the individual-sentencing requirement. Defendants have the right to present sentencers with information relevant to the sentencing decision and sentencers are obliged to consider that information in determining the appropriate sentence. The thrust of this Court’s mitigation jurisprudence ends here, for the Court has never held that the Constitution requires a specific method for balancing aggravating and mitigating factors. Pp. 9–11.

(c) Kansas’ death penalty statute satisfies the constitutional mandates of *Furman* and its progeny because it rationally narrows the class of death-eligible defendants and permits a jury to consider any mitigating evidence relevant to its sentencing determination. The State’s weighing equation merely channels a jury’s discretion by providing criteria by which the jury may determine whether life or death is appropriate. Its system provides the kind of guided discretion sanctioned in, *e.g.*, *Walton, supra*. Contrary to Marsh’s argument, §21–4624(e) does not create a general presumption in favor of the death penalty. A life sentence must be imposed if the State fails to demonstrate the existence of an aggravating circumstance beyond a reasonable doubt, if the State cannot prove beyond a reasonable doubt that aggravating circumstances are not outweighed by mitigating circumstances, or if the jury is unable to reach a unanimous deci-

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sion in any respect. Marsh's contentions that an equipoise determination reflects juror confusion or inability to decide between life and death or that the jury may use equipoise as a loophole to shirk its constitutional duty to render a reasoned, moral sentencing decision rest on an implausible characterization of the Kansas statute—that a jury's determination that aggravators and mitigators are in equipoise is not a *decision*, much less a decision *for death*. Weighing is not an end, but a means to reaching a decision. Kansas' instructions clearly inform the jury that a determination that the evidence is in equipoise is a decision for death. Pp. 11–16.

278 Kan. 520, 102 P. 3d 445, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, and ALITO, JJ., joined. SCALIA, J., filed a concurring opinion. STEVENS, J., filed a dissenting opinion. SOUTER, J., filed a dissenting opinion, in which STEVENS, GINSBURG, and BREYER, JJ., joined.