

Ring v. Arizona: Who Decides Death?

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In the United States, the right to a jury trial is guaranteed by the Sixth Amendment to the U.S. Constitution, made applicable to the states through the Fourteenth Amendment. The Sixth Amendment states, in part, “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed.” The U.S. Supreme Court has also held that the “Constitution gives a criminal defendant the right to have a jury determine, beyond a reasonable doubt, his guilt of every element of the crime with which he is charged.”¹

In *Walton v. Arizona*,² the U.S. Supreme Court held that an Arizona statute permitting a judge to determine whether the death penalty should be imposed on a capital defendant did not violate the Sixth Amendment’s guarantee to a trial by jury. In particular, the Court found that aggravating factors necessary to impose the death penalty were not elements of the offense and instead served as circumstances for consideration by a judge when deciding between the penalties of life imprisonment or death.

In contrast, the Court held in *Apprendi v. New Jersey*,³ that a judge could not make findings that would increase a defendant’s sentence beyond the maximum, because that was comparable with an additional conviction. In *Apprendi*, the defendant was convicted of second-degree possession of a firearm, an offense carrying a maximum penalty of 10 years under New Jersey law. The sentencing judge found that Apprendi’s crime was racially motivated and therefore under New Jersey law triggered the appli-

cation of a hate crime enhancement. The trial judge sentenced Apprendi to 12 years, two years over the maximum sentence that the jury could impose but for the hate crime enhancement. The U.S. Supreme Court held that Apprendi’s sentence violated his right to a jury determination that he was guilty beyond a reasonable doubt of each element of the crime with which he was charged. The Court noted, “If a State makes an increase in a defendant’s authorized punishment contingent on the finding of a fact, that fact—no matter how the State labels it—must be found by a jury beyond a reasonable doubt” (Ref. 3, pp 482–83).

The *Apprendi* Court appreciated that a conflict could be found between its holdings in *Apprendi* and *Walton*, but stated that the rulings could be reconciled. The key distinction was that the Arizona statutory scheme that was at issue in *Walton* provided that a conviction of first-degree murder carried a maximum sentence of death. The Court stated:

Once a jury has found the defendant guilty of all the elements of an offense which carries as its maximum penalty the sentence of death, it may be left to the judge to decide whether that maximum penalty, rather than a lesser one, ought to be imposed [Ref. 3, p 497, emphasis deleted, quoting *Almendarez-Torres v. U.S.*, 523 U.S. 224, 257, n 2 (1998), Scalia J, dissenting].

On January 11, 2002, the U.S. Supreme Court agreed to hear *Ring v. Arizona* to reconsider the constitutionality of having a judge, rather than a jury, decide the critical sentencing issues in a death penalty case. The case was decided on June 24, 2002.⁴

Case Background

Timothy Ring was charged with murder and armed robbery. On November 28, 1994, a Wells Fargo armored van pulled up to a store in a local mall, and the courier left the van to pick up money inside the mall. When he returned, the van and its driver

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were gone. The van was later found in a parking lot with the driver dead of a single gunshot to the head. More than \$562,000 in cash and \$270,000 in checks were missing from the van. Based on an informant's tip, the police placed wiretaps on the telephones of Timothy Ring, James Greenham, and William Ferguson. Ring was noted to make statements in his telephone conversation with Ferguson that indicated he had knowledge about the stolen money. The police executed a search warrant at Ring's house and discovered a duffel bag in his garage containing more than \$271,000 in cash. Ring alleged that the money was startup capital for a construction company he and Greenham were planning to form. He stated that he had obtained the money from his work as a confidential informant for the Federal Bureau of Investigation and as a bail bondsman, although other evidence indicated that he had made less than \$10,000 from these jobs.

The trial judge instructed the jury on alternative charges of premeditated murder and felony murder. The jury convicted Ring of felony murder but deadlocked on the charge of premeditated murder. Under Arizona law, Ring could not be sentenced to death unless further findings were made. In addition, the Arizona statute required the judge who presided at trial to conduct a separate sentencing hearing to determine the presence or absence of certain circumstances to assist in deciding what sentence should be imposed. The judge was also responsible for determining the presence or absence of enumerated "aggravating circumstances" and "mitigating circumstances" at the conclusion of the sentencing hearing.

At the sentencing hearing, Greenham (who had pleaded guilty to second-degree murder and armed robbery) testified that Ring had shot the driver of the van and had taken the role as leader in planning the robbery. This testimony contradicted prior statements Greenham had made to Ring's attorney that Ring had not planned or initiated the robbery. The trial judge sentenced Ring to death and acknowledged that because Ring had been convicted of felony murder, Ring was eligible for the death penalty only if he was the actual killer of the van driver or if he was a "major participant in the armed robbery" and "exhibited a reckless disregard or indifference for human life." Based on Greenham's testimony, the judge concluded that Ring shot the van driver and was a major participant in the armed robbery. The judge noted that two aggravating factors were

present: Ring's expectation of receiving something of "pecuniary value" and the commission of the crime "in an especially heinous, cruel or depraved manner." The one mitigating factor noted by the judge was Ring's "minimal" criminal record. However, the judge found that this factor did not "call for leniency" and sentenced Ring to death.

Ring appealed to the Arizona Supreme Court arguing that Arizona's capital sentencing scheme violated the Sixth and Fourteenth Amendments to the U.S. Constitution, because it entrusts to a judge, rather than a jury, the finding of a fact that would serve to raise the defendant's maximum penalty. The Arizona Supreme Court viewed the *Apprendi* majority's portrayal of Arizona's capital sentencing law as incorrect and agreed with the dissent that the determinations made by the judge with respect to the aggravating factors required "factual findings." However, the Arizona Supreme Court noted that the U.S. Supreme Court had previously upheld Arizona's sentencing statute in *Walton v. Arizona* and had stated, 10 years later, in *Apprendi* that *Walton* remained good law. Therefore, the Arizona Supreme Court, citing its duties under the supremacy clause, upheld the death sentence imposed on Ring. The U.S. Supreme Court granted *certiorari* to revisit the case, given the tension between *Walton* and the reasoning of *Apprendi*.

The Decision

In a seven-to-two decision, the U.S. Supreme Court reversed the judgment of the Arizona Supreme Court and remanded the case for further proceedings consistent with the judgment. Justice Ginsberg, writing for the majority, stated that the question before the Supreme Court was "whether th[e] aggravating factor may be found by the judge, as Arizona law specifies, or whether the Sixth Amendment's jury trial guarantee, made applicable to the states by the Fourteenth Amendment, requires that the aggravating factor determination be entrusted to the jury" (Ref. 4, p 2437, citations omitted).

The Court opined that its holdings in *Walton* and *Apprendi* are irreconcilable. Taken together, the holdings would mean that it is permissible under the Sixth Amendment for a state to allow a judge, instead of a jury, to make a finding that would determine whether a defendant served life in prison or was put to death but is a violation of the Sixth Amendment for a state to do the same with respect to a factual

determination that results in a two-year increase in the maximum sentence. In their discussion regarding whether an aggravating-factor determination in death penalty cases should be considered as an element of the offense that must be determined by a jury, the Court majority wrote, “We see no reason to differentiate capital crimes from all others in this regard” (Ref. 4, p 2442). The Court emphasized that “the relevant inquiry is one not of form, but of effect” (Ref. 4, p 2439, citing *Apprendi v. New Jersey*, 530 U.S., at 494), and found that “because Arizona’s enumerated aggravating factors operate as the functional equivalent of an element of a greater offense, the Sixth Amendment requires that they be found by a jury” (Ref. 4, p 2443, internal citations omitted).

The state of Arizona also argued that, even if facts increasing punishment beyond the maximum authorized by the jury verdict must ordinarily be found by a jury, aggravating circumstances necessary to result in a death sentence may nonetheless be reserved for determination by a judge because “death is different” and is deserving of greater protection. The state argued that granting judges authority to find aggravating factors “may be a better way to guarantee against the arbitrary imposition of the death penalty” (Ref. 4, p 2442). Writing for the majority, however, Justice Ginsberg dismissed this argument and opined that the superiority of judicial fact finding in capital cases is “far from evident” and observed, additionally, that most states with statutes requiring the presence of aggravating factors entrust those determinations to the jury, not the judge (Ref. 4, p. 2442).

The Court majority concluded:

Walton and *Apprendi* are irreconcilable; our Sixth Amendment jurisprudence cannot be home to both. Accordingly, we overrule *Walton* to the extent that it allows a sentencing judge sitting without a jury to find an aggravating circumstance necessary for imposition of the death penalty. Because Arizona’s enumerated aggravating factors operate as the functional equivalent of an element of a greater offense, the Sixth Amendment requires that they be found by a jury [Ref. 4, p 2443, internal quotations and citations omitted].

Justice Scalia wrote a concurring opinion in which Justice Thomas joined. Justice Scalia expressed concern regarding the increasing movement of state and federal legislatures to adopt sentencing factors that increase punishment beyond that which is authorized by the jury. He emphasized,

... that the fundamental meaning of the jury trial guarantee of the Sixth Amendment is that all facts essential to imposition of the level of punishment that the defendant receives—whether

the statute calls them elements of the offense, sentencing factors, or Mary Jane—must be found by the jury beyond a reasonable doubt [Ref. 4, p 2444].

He observed:

[The] decline [in our people’s belief in the right to trial by jury] is bound to be confirmed, and indeed accelerated by the repeated spectacle of a man’s going to his death because a *judge* found that an aggravating factor existed. We cannot preserve our veneration for the protection of the jury in criminal cases if we render ourselves callous to the need for that protection by regularly imposing the death penalty without it [Ref. 4, p 2445; emphasis in original].

In his concurring opinion, Justice Breyer stated that he concurred in the judgment of the majority, but on different grounds. He believes that that jury sentencing in capital cases is mandated by the Eighth Amendment because juries have a comparative advantage over judges in determining whether capital punishment will serve society’s needs for retribution in a given case, as jury members are “more attuned to the community’s moral sensibility” (Ref. 4, p 2447; internal quotations and citations omitted).

Justice O’Connor, writing a dissent that was joined by Chief Justice Rehnquist, argued that the Court should overturn their previous holding in *Apprendi* rather than their holding in *Walton*. Justice O’Connor commented that the Constitution did not require that any fact that could increase the penalty of the crime be treated as an element of the offense. The dissent cautioned that a substantial increase in criminal appeals had already resulted from their prior ruling in *Apprendi* and foreshadowed similar appeals in cases in which judges had imposed the death penalty on capital defendants.

Discussion

By overturning their prior ruling in *Walton*, the U.S. Supreme Court violated the principle of following precedent, a doctrine known as *stare decisis* (let the decision stand). The Court observed that although “the doctrine of *stare decisis* is of fundamental importance to the rule of law. . .our precedents are not sacrosanct. . .[and must be overruled] where the necessity and propriety of doing so has been established” (Ref. 4, pp 2442–43, internal quotations and citations omitted). The Court was satisfied that *Ring* presented such a case.

The Supreme Court’s holding in this case is likely to have a substantial impact on sentencing practices in capital cases in several states. Before this ruling,

three States (Arizona, Idaho, and Montana) had statutes authorizing a single judge to impose the death penalty, and two states (Colorado, Nebraska) allowed the determination of the death penalty by a three-judge panel. Based on the *Ring* decision, these five state statutes are no longer likely to meet constitutional muster. Three of these states (Arizona, Montana, and Colorado) have already rewritten their statutes so that juries, not judges, determine when the death penalty will be imposed.

Four other states (Alabama, Delaware, Florida, and Indiana) allow a judge to make a sentencing decision after the jury has made a recommendation regarding the imposition of the death penalty. Although the impact of the *Ring* decision regarding the constitutionality of these statutes is less clear, both Delaware and Indiana have rewritten their statutes and now require a jury to determine eligibility for the

death penalty without involvement by the judge in this decision. The retroactive application of the *Ring* decision to capital defendants sentenced under statutes that may now be unconstitutional has yet to be determined. The applicability of the Court's holding also remains unknown in those situations in which a defendant waived his or her right to a trial by jury or when the judge imposed the death penalty on the recommendation of the jury. The Court's decision may affect nearly 800 death sentences in nine states and may require resentencing of hundreds of inmates.

References

1. U.S. v. Gaudin, 515 U.S. 506, 510 (1995)
2. Walton v. Arizona, 497 U.S. 639 (1990)
3. Apprendi v. New Jersey, 530 U.S. 466 (2000)
4. Ring v. Arizona, 536 U.S. 584 (2002)