



LOCKETT V. OHIO

SUPREME COURT OF THE UNITED STATES

438 U.S. 586

July 3, 1978

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OPINION: CHIEF JUSTICE BURGER...We granted certiorari...to consider...whether Ohio violated the Eighth and Fourteenth Amendments by sentencing Sandra Lockett to death pursuant to a statute that narrowly limits the sentencer's discretion to consider the circumstances of the crime and the record and character of the offender as mitigating factors.

Lockett was charged with aggravated murder with the aggravating specifications (1) that the murder was "committed for the purpose of escaping detection, apprehension, trial, or punishment" for aggravated robbery, and (2) that the murder was "committed while...committing, attempting to commit, or fleeing immediately after committing or attempting to commit...aggravated robbery." ...She was also charged with aggravated robbery. The State's case against her depended largely upon the testimony of a co-participant, Parker, who gave the following account of her participation...

Lockett became acquainted with Parker and Dew while she and a friend, Baxter, were in New Jersey. Parker and Dew then accompanied Lockett, Baxter, and Lockett's brother back to Akron, Ohio, Lockett's hometown. After they arrived in Akron, Parker and Dew needed money for the trip back to New Jersey. Dew suggested that he pawn his ring. Lockett...felt that the ring was too beautiful to pawn and suggested instead that they [rob a grocery store and a furniture store in the area.] She warned that the grocery store's operator was a "big guy" who carried a "45" and that they would have "to get him real quick." She also volunteered to get a gun from her father's basement to aid in carrying out the robberies, but by that time, the two stores had closed and it was too late to proceed

with the plan to rob them.

[Lockett's brother]...suggested a plan for robbing a pawnshop. He and Dew would enter the shop and pretend to pawn a ring. Next Parker, who had some bullets, would enter the shop, ask to see a gun, load it, and use it to rob the shop. No one planned to kill the pawnshop operator in the course of the robbery. Because she knew the owner, Lockett was not to be among those entering the pawnshop, though she did guide the others to the shop that night.

The next day Parker, Dew, Lockett, and her brother gathered at Baxter's apartment. Lockett's brother asked if they were "still going to do it," and everyone, including Lockett, agreed to proceed... Lockett's brother and Dew entered the shop. Parker then left the [parked] car and told Lockett to start it again in two minutes. The robbery proceeded according to plan until the pawnbroker grabbed the gun when Parker announced the "stickup." The gun went off with Parker's finger on the trigger, firing a fatal shot into the pawnbroker. Parker went back to the car where Lockett waited with the engine running. While driving away from the pawnshop, Parker told Lockett what had happened. She took the gun from the pawnshop and put it into her purse. Lockett and Parker drove to Lockett's aunt's house and called a taxicab. Shortly thereafter, while riding away in a taxicab, they were stopped by the police, but by this time Lockett had placed the gun under the front seat. Lockett told the police that Parker rented a room from her mother and lived with her family. After verifying this story with Lockett's parents, the police released Lockett and Parker. Lockett hid Dew and Parker in the attic when the police arrived at the Lockett household later that evening...

Prior to trial, [Parker] pled guilty to the murder charge and agreed to testify against Lockett, her brother, and Dew. In return, the prosecutor dropped the aggravated robbery charge and the



specifications to the murder charge, thereby eliminating the possibility that Parker could receive the death penalty. Lockett's brother and Dew were later convicted of aggravated murder with specifications. Lockett's brother was sentenced to death, but Dew received a lesser penalty because it was determined that his offense was "primarily the product of mental deficiency," one of the three mitigating circumstances specified in the Ohio death penalty statute.

Two weeks before Lockett's separate trial, the prosecutor offered to permit her to plead guilty to voluntary manslaughter and aggravated robbery (offenses which each carried a maximum penalty of 25 years' imprisonment and a maximum fine of \$10,000), if she would cooperate with the State, but she rejected the offer. Just prior to her trial, the prosecutor offered to permit her to plead guilty to aggravated murder without specifications, an offense carrying a mandatory life penalty, with the understanding that the aggravated robbery charge and an outstanding forgery charge would be dismissed. Again she rejected the offer.

At trial, the opening argument of Lockett's defense counsel summarized what appears to have been Lockett's version of the events leading to the killing. He asserted the evidence would show that, as far as Lockett knew, Dew and her brother had planned to pawn Dew's ring for \$100 to obtain money for the trip back to New Jersey. Lockett had not waited in the car while the men went into the pawnshop but had gone to a restaurant for lunch and had joined Parker, thinking the ring had been pawned, after she saw him walking back to the car. Lockett's counsel asserted that the evidence would show further that Parker had placed the gun under the seat in the taxicab and that Lockett had voluntarily gone to the police station when she learned that the police were looking for the pawnbroker's killers.

Parker was the State's first witness. [He told his version and] admitted to a prior criminal record of breaking and entering, larceny, and receiving stolen goods, as well as bond jumping. He also acknowledged that his plea to aggravated murder had eliminated the possibility of the death penalty, and that he had agreed to testify against Lockett, her brother, and Dew as part of his plea agreement with the prosecutor. At the end of the major portion of Parker's testimony, the prosecutor renewed his offer to permit Lockett to plead guilty to aggravated murder without specifications and to drop the other charges against her. For the third time Lockett refused the option of pleading guilty to a lesser offense...

The court instructed the jury that, before it could find Lockett guilty, it had to find that she purposely had killed the pawnbroker while committing or attempting to commit aggravated robbery. The jury was further charged that one who "purposely aids, helps, associates himself or herself with another for the purpose of committing a crime is regarded as if he or she were the principal offender and is just as guilty as if the person performed every act constituting the offense..."

...The jury found Lockett guilty as charged.

Once a verdict of aggravated murder with specifications had been returned, the Ohio death penalty statute required the trial judge to impose a death sentence unless, after "considering the nature and circumstances of the offense" and Lockett's "history, character, and condition," he found by a preponderance of the evidence that (1) the victim had induced or facilitated the offense, (2) it was unlikely that Lockett would have committed the offense but for the fact that she "was under duress, coercion, or strong provocation," or (3) the offense was "primarily the product of Lockett's psychosis or mental deficiency."

...[Pre-sentence reports described Lockett] as a 21-year-old with low-average or average intelligence, and not suffering from a mental deficiency. One of the psychologists reported that "her prognosis for rehabilitation" if returned to society was favorable. The pre-sentence report showed that Lockett had committed no major offenses although she had a record of several minor ones as a juvenile and two minor offenses as an adult. It also showed that she had once used heroin but was receiving treatment at a drug abuse clinic and seemed to be "on the road to success" as far as her drug problem was concerned. It concluded that Lockett suffered no psychosis and was not mentally deficient.

After considering the reports and hearing argument on the penalty issue, the trial judge concluded that the offense had not been primarily the product of psychosis or mental deficiency. Without specifically addressing the other two statutory mitigating factors, **the judge said that he had "no alternative, whether he liked the law or not" but to impose the death penalty.** He then sentenced Lockett to death...We find it necessary to consider only [Lockett's] contention that her death sentence is invalid because the statute under which it was imposed did not permit the sentencing judge to consider, as mitigating factors, her character, prior record, age, lack of specific intent to cause death, and her relatively minor part in the crime...[Lockett] contends that the Eighth and Fourteenth Amendments require that the sentencer be given a full opportunity to consider mitigating circumstances in capital cases and that the Ohio statute does not comply with that requirement ...We...conclude 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...The Ohio death penalty statute does not permit the type of individualized consideration of mitigating factors we now hold to be required by the Eighth and Fourteenth Amendments in capital cases...

Chip, chip...

None of the statutes we sustained in *Gregg* and the companion cases clearly operated at that time to prevent the sentencer from considering any aspect of the defendant's character and record or any circumstances of his offense as an independently mitigating factor...[This statute] is significantly different. Once a defendant is found guilty of aggravated murder with at least one of seven specified aggravating circumstances, the death penalty must be imposed unless, considering "the nature and circumstances of the offense and the history, character, and condition of the offender," the sentencing judge determines that at least one of the following mitigating circumstances is established by a preponderance of the evidence:

- (1) The victim of the offense induced or facilitated it.
- (2) It is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation.
- (3) The offense was primarily the product of the offender's psychosis or mental deficiency, though such condition is insufficient to establish the defense of insanity.



...[Here,] only the three factors specified in the statute can be considered in mitigation of the defendant's sentence...**The absence of direct proof that the defendant intended to cause the death of the victim is relevant for mitigating purposes only if it is determined that it sheds**

some light on one of the three statutory mitigating factors. Similarly, consideration of a defendant's comparatively minor role in the offense, or age, would generally not be permitted, as such, to affect the sentencing decision.

The limited range of mitigating circumstances which may be considered by the sentencer under the Ohio statute is incompatible with the Eighth and Fourteenth Amendments. To meet constitutional requirements, a death penalty statute must not preclude consideration of relevant mitigating factors...[Reversed.]...

CONCURRENCE: Justice Marshall...I continue to adhere to my view that the death penalty is, **under all circumstances**, a cruel and unusual punishment prohibited by the Eighth Amendment...The imposition of the death penalty for this crime...makes no distinction between a willful and malicious murderer and an accomplice to an armed robbery in which a killing unintentionally occurs...That the State of Ohio chose to permit imposition of the death penalty under a purely vicarious theory of liability seems to belie the notion that the Court can discern the "evolving standards of decency"...by reference to state "legislative judgment."...

Justice Marshall is saying that any legislature that would put someone to death who participated in a crime for monetary gain knowing a partner in crime had a gun that might be used to kill and that did, in fact, kill, could not possibly represent their own constituents. Ohio's citizens are decent people who would not stand for such a thing, while Ohio's legislature are "indecent." He is calling the majority of Ohio's elected officials "indecent." I guess he would know. After all, he is a Justice of the Supreme Court of the United States! Forget representative democracy!

DISSENT: Mr. Justice White...The Court has now completed its about-face since *Furman*¹ [where it was] held that as a result of permitting the sentencer to exercise unfettered discretion to impose or not to impose the death penalty for murder, the penalty was then being imposed discriminatorily, wantonly and freakishly, and so infrequently that any given death sentence was cruel and unusual. The Court began its retreat in *Woodson*², where a plurality held that statutes which imposed mandatory death sentences even for first-degree murders were constitutionally invalid because the Eighth Amendment required that consideration be given by the sentencer to aspects of character of the individual offender and the circumstances of the particular offense in deciding whether to impose the punishment of death. Today it is held, again through a plurality, that the sentencer may constitutionally impose the death penalty only as an exercise of his unguided discretion after being presented with all circumstances which the defendant might believe to be conceivably relevant to the appropriateness of the penalty for the individual offender...

¹Case 8A-CUP-10 on this website.

²Case 8A-CUP-12 on this website.

I...continue to be of the view...that it does not violate the Eighth Amendment for a State to impose the death penalty on a mandatory basis when the defendant has been found guilty beyond a reasonable doubt of committing a deliberate, unjustified killing. Moreover, I greatly fear that the effect of the Court's decision today will be to compel constitutionally a restoration of the state of affairs at the time *Furman* was decided, where the death penalty is imposed so erratically and the threat of execution is so attenuated for even the most atrocious murders that "its imposition would then be the pointless and needless extinction of life with only marginal contributions to any discernible social or public purposes." *Furman*. By requiring as a matter of constitutional law that sentencing authorities be permitted to consider and in their discretion to act **upon any and all mitigating circumstances, the Court permits them to refuse to impose the death penalty no matter what the circumstances of the crime. **This invites a return to the pre-*Furman* days when the death penalty was generally reserved for those very few for whom society has least consideration.** I decline to extend *Woodson*...in this respect...**

I nevertheless concur in the judgments of the Court reversing the imposition of the death sentences because I agree with the contention of the petitioners, ignored by the plurality, that it violates the Eighth Amendment to impose the penalty of death without a finding that the defendant possessed a purpose to cause the death of the victim...as grossly out of proportion to the seriousness of the crime...

DISSENT: Justice Rehnquist...[The Court has] not cloven to a principled doctrine either holding the infliction of the death penalty to be unconstitutional *per se* or clearly and understandably stating the terms under which the...death penalty [may] be imposed...

It seems to me indisputably clear from today's opinion that...the Court is scarcely faithful to what has been written before...If a defendant as a matter of constitutional law is to be permitted to offer as evidence in the sentencing hearing any fact, however bizarre, which he wishes,...the new constitutional doctrine will not eliminate arbitrariness or freakishness in the imposition of sentences, but will codify and institutionalize it. By encouraging defendants in capital cases, and presumably sentencing judges and juries, to take into consideration anything under the sun as a "mitigating circumstance," it will not guide sentencing discretion but will totally unleash it. It thus appears that the evil described by the *Woodson* plurality -- that mandatory capital sentencing "papered over the problem of unguided and unchecked jury discretion" -- was in truth not the unchecked discretion, but a system which "papered over" its exercise rather than spreading it on the record...Sandra Lockett was fairly tried, and was found guilty of aggravated murder. I do not think Ohio was required to receive any sort of mitigating evidence which an accused or his lawyer wishes to offer...I would affirm the judgment of the Supreme Court of Ohio.