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Recent Case, Ex parte Hodges

Lauren D. Sudeall

CRIMINAL PROCEDURE — SIXTH AMENDMENT — ALABAMA SUPREME COURT UPHOLDS A DEATH SENTENCE IMPOSED BY JUDICIAL OVERRIDE OF A JURY RECOMMENDATION FOR LIFE IMPRISONMENT WITHOUT PAROLE. — *Ex parte Hodges*, 856 So. 2d 936 (Ala. 2003).

In *Ring v. Arizona*,[1] the Supreme Court held that the Sixth Amendment requires a jury, not a judge, to find beyond a reasonable doubt the aggravating circumstances necessary for imposition of the death penalty.[2] The Court's narrow opinion emphasized that the jury must do all of the "*factfinding* necessary to put [a defendant] to death,"[3] and it therefore appeared to leave intact the "hybrid" sentencing schemes of four states,[4] which permitted the trial judge to impose the death penalty by overriding the jury's recommendation of a lesser sentence.[5] Recently, in *Ex parte Hodges*,[6] the Alabama Supreme Court affirmed a sentence of death imposed by a trial court judge over a jury's 8–4 recommendation of life imprisonment without the possibility of parole.[7] The court's decision raises crucial questions about *Ring*'s scope and, by interpreting *Ring* so narrowly, leaves the power of judicial override susceptible to considerable abuse.

On January 4, 1998, Melvin Hodges and Marlo Murph robbed the Golden Corral restaurant in Opelika, Alabama, where Hodges was employed as a crew leader.[8] When they arrived at the restaurant, they saw Elizabeth Seaton, a coworker of Hodges's, driving away in her van.[9] They followed the van, made Seaton pull over, and then forced Seaton, at gunpoint, to drive back and open the restaurant safe. After the robbery, Murph and Hodges forced Seaton to drive around the area in her van.[10] According to Murph's testimony, Hodges decided that Seaton "knew too much" and made Seaton pull the van over; at that point, he pulled Seaton from the van and, with Murph's aid, "began hitting and choking her."[11] Eventually, Hodges got back into the van and ran over Seaton four times. Hodges and Murph then left to-

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1 122 S. Ct. 2428 (2002).

2 *Id.* at 2443.

3 *Id.* (emphasis added).

4 The four states employing hybrid sentencing schemes at the time of the *Ring* decision were Alabama, Delaware, Florida, and Indiana. *Id.* at 2442 n.6.

5 *See id.* (defining a hybrid system as one "in which the jury renders an advisory verdict but the judge makes the ultimate sentencing determinations").

6 856 So. 2d 936 (Ala. 2003), *cert. denied*, 124 S. Ct. 465 (2003).

7 *Id.* at 948–49.

8 *Id.* at 939.

9 *Id.* at 938–39.

10 *Id.* at 939.

11 *Id.* (quoting *Hodges v. State* (*Hodges I*), 856 So. 2d 875, 895 (Ala. Crim. App. 2001)) (internal quotation marks omitted).

gether, ultimately abandoning the van at a nearby church.[12] At trial, the jury found Hodges guilty of committing murder during the course of a robbery.[13]

At the sentencing hearing, the jury recommended by a vote of 8–4 that Hodges receive a sentence of life imprisonment without the possibility of parole.[14] In entering its findings regarding the existence of aggravating circumstances, the trial court found that the aggravating circumstance of robbery was "proven beyond a reasonable doubt based on the jury's verdict that found Hodges guilty of robbery-murder."[15] The trial court also found as an aggravating circumstance that the murder had been committed during the course of a kidnapping.[16] Although Hodges was not originally charged with such an offense, and therefore no jury finding was made, upon remand the court drew evidence from the record to support such a finding.[17] In Hodges's sentencing order, the trial judge alone made the additional finding that the offense was "especially heinous, atrocious, or cruel as compared to other capital offenses."[18] The trial court found no statutory mitigating evidence, rejecting Hodges's argument that his drinking on that night had impaired his ability to "conform his conduct to the requirements of the law" and concluding that intoxication alone does not imply an inability to appreciate the criminality of one's conduct.[19] The trial court also failed to find any significant nonstatutory mitigating evidence, according very little weight to the testimony of Hodges's mother regarding a difficult family history involving physical and verbal abuse.[20] In weighing the aggravating and mitigating factors, the

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[12] *Id.*

[13] *Hodges I*, 856 So. 2d at 894. Under section 13A-5-47 of the Alabama Code, the jury must return an advisory verdict at the end of the sentencing hearing, at which point a pre-sentence investigation report must be ordered and received by the trial court, and additional arguments regarding aggravating and mitigating circumstances may be presented. After also considering evidence presented at trial and during the sentencing hearing, the trial court must enter written findings of all statutory aggravating factors and both statutory and nonstatutory mitigating factors. Finally, after considering the jury's recommendation, the trial court must weigh the aggravating and mitigating factors and then decide upon the defendant's sentence. *See* ALA. CODE § 13A-5-47 (1994).

[14] *Hodges I*, 856 So. 2d at 894.

[15] *Id.* at 890; *see also* ALA. CODE § 13A-5-49(4).

[16] *Hodges I*, 856 So. 2d at 890; *see also* ALA. CODE § 13A-5-49(4).

[17] *See Hodges I*, 856 So. 2d at 890, 929–30. The trial court also initially found that the murder had been committed for pecuniary gain, although the State later conceded that the court had erred in making that finding. *See id.* at 891.

[18] *Id.* at 930; *see also* ALA. CODE § 13A-5-49(8).

[19] *Hodges I*, 856 So. 2d at 932. Under Alabama law, such impairment may be considered a mitigating circumstance. *See* ALA. CODE § 13A-5-51(6).

[20] *See Hodges I*, 856 So. 2d at 932. In Hodges's amended sentencing order, the trial judge stated that "[i]n the opinion of the Court, this testimony is entitled to little, if any, weight." Alabama v. Hodges, No. CC 99-264 (Ala. Cir. Ct., Lee County, May 2, 2001) (amended order of death sentence), at 7 [hereinafter Amended Sentencing Order]. On review, the Court of Criminal Ap-

trial court elected not to follow the jury's recommendation, concluding that "[t]his was an especially cruel and torturous murder" and that given Hodges's "depravity . . . [and] the callousness of his acts toward the victim . . . a greater measure of punishment is proper than life [imprisonment] without parole."[21] The Court of Criminal Appeals affirmed.[22]

The Alabama Supreme Court also affirmed.[23] Writing for a unanimous court, Justice Lyons held that Hodges's murder conviction complied with the requirement under *Ring* that the jury, and not the trial judge, determine the existence of any aggravating circumstance necessary for imposition of the death penalty.[24] The court noted that the jury's finding of at least one aggravating factor — in this case robbery — made Hodges eligible for the death penalty under Alabama law;[25] therefore, in accordance with *Ring*, the jury had necessarily found all facts necessary for imposition of a death sentence when it found this aggravating circumstance. The court then looked at the trial court's reweighing of mitigating and aggravating circumstances and determined that such a reweighing did not constitute a factual finding that needed to be made by a jury.[26] Justice Lyons also rejected the argument that the trial court's determination that the offenses were

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peals approved the trial court's analysis: "Although the trial court is required to consider all mitigating circumstances, the decision of whether a particular mitigating circumstance is proven and the weight to be given it rests with the sentencer." *Hodges I*, 856 So. 2d at 932 (quoting *Boyd v. State*, 715 So. 2d 825, 840 (Ala. Crim. App. 1997), *aff'd*, 715 So. 2d 852 (Ala. 1998)) (internal quotation marks omitted).

[21] *Hodges*, 856 So. 2d at 942 (third alteration in original) (quoting Amended Sentencing Order, *supra* note 20, at 7–8) (internal quctation marks omitted).

[22] The Court of Criminal Appeals initially remanded the case to the trial court to "correct its sentencing order to omit from its consideration an improperly applied aggravating circumstance [in this case, commission of the offense for pecuniary gain], to make specific findings about the aggravating and the mitigating circumstances, and to state the reasons why it gave the jury's recommendation the consideration that it gave it." *Hodges I*, 856 So. 2d at 929. On return from remand, the Court of Criminal Appeals affirmed. *Id.* at 936.

[23] *Hodges*, 856 So. 2d at 949.

[24] *Id.* at 944. The court also held that the death sentence was proper under the Alabama Code's standard for appellate review. *See id.* at 948–49; *see also* ALA. CODE § 13A-5-53(a), (b) (outlining the standard for appellate review of death sentences, which requires that their imposition not have been influenced by "passion, prejudice, or any other arbitrary factor" and that the "independent weighing of the aggravating and mitigating circumstances at the appellate level indicates that death was the proper sentence"). In *Ring v. Arizona*, 122 S. Ct. 2428 (2002), the Supreme Court held that Arizona's capital sentencing scheme, which allowed a trial judge sitting without a jury to determine the "presence or absence of the aggravating factors required by Arizona law for imposition of the death penalty," was incompatible with the Sixth Amendment. *Id.* at 2432. The Court concluded that capital defendants were instead "entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment." *Id.*

[25] *Hodges*, 856 So. 2d at 943; *see also* ALA. CODE § 13-5-45(f) ("Unless at least one aggravating circumstance . . . exists, the sentence shall be life imprisonment without parole.").

[26] *See Hodges*, 856 So. 2d at 943–44.

"especially heinous, atrocious, or cruel" was a fact that had to be found by a jury.[27] Finally, the court held that Hodges had been able to present to the jury all of the relevant mitigating evidence for his case and that the "trial court's erroneous comments about the relevancy of the evidence" when truncating Hodges's mother's testimony about his childhood did not constitute plain error, which would have required reversal of Hodges's sentence and remand for a new sentencing hearing.[28]

Although the Alabama Supreme Court may be correct that *Ring* did not technically render hybrid sentencing schemes unconstitutional, *Hodges* demonstrates that there may be little, if any, practical distinction between the Alabama scheme and the Arizona scheme invalidated in *Ring*.[29] Alabama's hybrid sentencing scheme creates a system in which the jury's role is minimized (and perhaps even tainted)[30] as a result of the judge's retaining nearly sole control over the sentencing process. Although the jury must find the necessary facts to make a defendant eligible for the death penalty, judges in Alabama may then proceed with effectively standardless discretion, often drawing their own additional conclusions about the nature of the crime and then using those conclusions as support for imposition of a death sentence. *Hodges* may not provide a fully convincing argument for the unconstitutionality of the Alabama scheme under *Ring*, but it does reveal the narrowness of *Ring*'s practical application by Alabama courts.

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[27] *Id.* at 944–45. Here, the court relied on *Harris v. United States*, 122 S. Ct. 2406 (2002), which held that "[b]asing a 2-year increase in the defendant's minimum sentence on a judicial finding of brandishing does not evade the requirements of the Fifth and Sixth Amendments." *Id.* at 2420; *see also Ex parte* Waldrop, No. 1001194, 2002 WL 31630710, at *7 (Ala. Nov. 22, 2002) (stating that "*Ring* [does] not require that a jury make *every* factual determination," only that it make those that would increase to death the punishment for which the defendant is eligible).

[28] *Hodges*, 856 So. 2d at 947–48. Justice Johnstone concurred specially to emphasize that, although not an issue in this case, "erroneous denial of a valid challenge for cause is reversible error." *Id.* at 949 (Johnstone, J., concurring specially).

[29] In *Ring*, the petitioner was convicted of felony murder — a noncapital offense in Arizona — having committed murder during the course of a robbery. *Ring*, 122 S. Ct. at 2433. The trial judge in that case made the additional finding that Ring was the actual killer of the victim, making him eligible for the death penalty. *Id.* at 2435. The judge then found two aggravating factors — that the murder was committed for pecuniary gain and that it was committed in an "especially heinous, cruel or depraved manner" — and one mitigating factor — Ring's minimal criminal history, which the judge did not deem sufficient to warrant leniency. *Id.* at 2435–36 (quoting the appendix to the petition for certiorari) (internal quotation marks omitted). The judge then sentenced Ring to death. *Id.* at 2436.

[30] Several authors suggest that jurors' knowledge that their verdict is merely "advisory" may affect their factfinding process. Bryan Stevenson notes that when a jury is informed that its verdict is merely "advisory" or a "recommendation," it may "taint[] the reliability of the jury's factfinding processes." Bryan A. Stevenson, *The Ultimate Authority on the Ultimate Punishment: The Requisite Role of the Jury in Capital Sentencing*, 54 ALA. L. REV. 1091, 1119 (2003); *see also, e.g.*, Carol S. Steiker, *Things Fall Apart, but the Center Holds: The Supreme Court and the Death Penalty*, 77 N.Y.U. L. REV. 1475, 1479 (2002).

Whereas *Ring* affirmed the constitutionality of "pure jury" sentencing schemes and clearly invalidated those schemes that allowed judges to make the findings necessary to impose the death penalty,[31] the Court was less clear about the status of four hybrid systems, which it addressed only in a footnote.[32] This ambiguity has left many commentators wondering about the status of such schemes.[33] Dissenting in *Ring*, and acknowledging a question that may not have been fully addressed, Justice O'Connor predicted that "prisoners . . . in Alabama, Delaware, Florida, and Indiana, [the four states with hybrid sentencing schemes], may . . . seize on today's decision to challenge their sentences."[34] The Supreme Court has not ruled specifically on the question of judicial override since *Ring*; therefore, override formally remains constitutionally permissible. However, the Indiana legislature seems to have taken *Ring* as a signal, amending its sentencing scheme after the *Ring* decision to eliminate judicial overrides altogether.[35]

In Alabama, as in all states post-*Ring*, the jury must find all facts necessary for imposition of the death penalty. Alabama statutory law does not require, however, that the sentencing judge give the jury's advisory verdict any particular weight; the trial judge is required only to "consider the recommendation of the jury contained in its advisory verdict."[36] Aside from several procedural protections, including issuance to the judge of a pre-sentence investigation report and a proce-

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[31] *See Ring*, 122 S. Ct. at 2449 (O'Connor, J., dissenting) ("The Court effectively declares five States' capital sentencing schemes unconstitutional.").

[32] *Ring*, 122 S. Ct. at 2442 n.6 ("Four States have hybrid systems, in which the jury renders an advisory verdict but the judge makes the ultimate sentencing determinations."). In the same footnote, the Court observed that most states with capital punishment (twenty-nine out of thirty-eight) require not only that the jury find the facts necessary for the sentence of death, but also that it assume ultimate responsibility for the sentencing decision. *Id.* The Court noted that Ring did not "argue that the Sixth Amendment required the jury to make the ultimate determination whether to impose the death penalty," implying that the Court did not need to address directly this broader question. *Id.* at 2437 n.4. Suggesting that he certainly would have deemed such hybrid schemes unconstitutional, Justice Breyer concurred in the judgment on the ground that the Eighth Amendment requires that a jury, rather than a judge, make the ultimate sentencing decision in a capital case. *Id.* at 2446–48 (Breyer, J., concurring in the judgment).

[33] *See, e.g.*, Steiker, *supra* note 30, at 1479 (describing the application of *Ring* to hybrid sentencing schemes as "murk[y]"); *cf.* Ingrid A. Holewinski, *"Inherently Arbitrary and Capricious": An Empirical Analysis of Variations Among State Death Penalty Statutes*, 12 CORNELL J.L. & PUB. POL'Y 231, 236 (2002) ("Although *Ring v. Arizona* did not directly address judicial overrides, the Court's 2002 holding suggests that the use of overrides may be unconstitutional.").

[34] *Ring*, 122 S. Ct. at 2450 (O'Connor, J., dissenting).

[35] *See* Butler v. State, 842 So. 2d 817, 836 n.9 (Fla. 2003) (Pariente, J., concurring in part and dissenting in part) (citing 2002 Ind. Acts 117, § 2 (amending IND. CODE § 35-50-2-9 (2002))).

[36] ALA. CODE § 13A-5-47(e) (1994); *see also Ex parte* Taylor, 808 So. 2d 1215, 1219 (Ala. 2001) ("Under Alabama's capital-sentencing procedure, the trial judge must make specific written findings regarding the existence or nonexistence of each aggravating circumstance and each mitigating circumstance offered by the parties. In making these findings, the trial judge must consider a jury's recommendation of life imprisonment without parole." (citation omitted)).

dure by which the prosecution and defense are allowed to present additional aggravating and mitigating evidence, the only way in which the sentencing judge is statutorily held accountable for his verdict is through the requirement that he provide "written findings" of the aggravating and mitigating factors on which his decision is based.[37] When the Supreme Court evaluated Alabama's sentencing scheme pre-*Ring*, in *Harris v. Alabama*, it ruled that the Constitution did not require a more stringent standard of review[38] of state court judges' sentencing determinations.[39] Just prior to the *Ring* decision, the Alabama Supreme Court likewise evaluated and upheld the practice of judicial override in *Ex parte Taylor*.[40]

In contrast to sentencing decisions conducted under more stringent standards, the "reweighing" conducted by the sentencing judge in *Hodges* seems cursory and subjective, providing a demonstration of how little impact the jury's recommendation may have in practice. In fact, in the trial court's sentencing order, it is difficult to see how the jury's recommendation was "considered" at all. Judge Harper implied

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[37] *See* ALA. CODE § 13A-5-47. Deeming Alabama's sentencing procedure uniquely troublesome, Katheryn Russell notes that the hybrid schemes in Florida, Indiana, and Delaware can all be distinguished on the basis that they have a case law standard for determining when judicial override may be applied. Katheryn K. Russell, *The Constitutionality of Jury Override in Alabama Death Penalty Cases*, 46 ALA. L. REV. 5, 6 (1994); *see also* Neil R. Lebowitz, Note, Harris v. Alabama: *Standardless Jury Override in Capital Cases Deemed Constitutional*, 7 MD. J. CONTEMP. LEGAL ISSUES 515, 539–40 (1996). Justice Stevens makes a similar point in his *Harris v. Alabama* dissent: "Alabama's capital sentencing statute is unique. In Alabama, unlike any other State in the Union, the trial judge has unbridled discretion to sentence the defendant to death — even though a jury has determined that death is an inappropriate penalty . . . ." 513 U.S. 504, 515 (1995) (Stevens, J., dissenting). Unlike the majority, Justice Stevens concluded "that the complete absence of standards [in Alabama] to guide the judge's consideration of the jury's verdict" invalidated the statute under the Eighth and Fourteenth Amendments. *Id.* at 515–16.

[38] Although the *Harris* Court noted the application of a stricter standard in Florida, it held that such a standard was not constitutionally required. *Harris*, 513 U.S. at 511. Under Florida law, the judge must give "'great weight' to the jury's recommendation and may not override the advisory verdict of life unless 'the facts suggesting a sentence of death [are] so clear and convincing that virtually no reasonable person could differ.'" *Id.* at 509 (alteration in original) (quoting *Tedder v. State*, 322 So. 2d 908, 910 (Fla. 1975)).

[39] *Harris* held that the Eighth Amendment did not require the state to designate the weight that a judge must accord an advisory jury verdict, evincing pre-*Ring* approval of Alabama's sentencing scheme. *Id.* at 515.

[40] *See Taylor*, 808 So. 2d at 1218, 1219. Recent Alabama cases have hinted at a more clearly defined standard for override, suggesting that judges should afford greater weight to a jury's recommendation when a greater number of jurors have voted for life and when the jury has a strong factual basis for its recommendation. *See* Tomlin v. State, No. 1020375, 2003 WL 22272851, at *3 (Ala. Oct. 3, 2003); *Ex parte* Carroll, 852 So. 2d 833, 836 (Ala. 2002). It remains to be seen how this new formulation of a standard will unfold; however, cases like *Hodges* make it unclear how much of a difference such a standard would make. It is also interesting that the court in *Carroll* explicitly noted that its decision was made before the Supreme Court decided *Ring* and that decisions regarding the "authority of the trial court to override a [jury's recommendation of life imprisonment without the possibility of parole] and the scope of the appellate court's review must await another day." *Id.* at 836 n.1.

a minimal role for the jury's advisory verdict, stating that the court had "considered the jury recommendation . . . and ha[d] made an *independent analysis* of the existence, or nonexistence, of aggravating and mitigating circumstances."[41] Furthermore, in the sentencing order, Judge Harper relied most heavily on his own finding that the murder was "especially heinous, atrocious, and cruel."[42] Although *Ring* gave the judge the green light to impose a death sentence once the jury had found one aggravating factor, Judge Harper's decision to sentence Hodges to death was based primarily on his own findings.[43] In a case like Hodges's, the finding that the murder was committed during a robbery or kidnapping is starkly obvious from almost any version of the presented facts; in such a situation, the jury is involved only superficially and functionally has no input into the sentencing decision.[44] While this type of sentencing scheme may remain within the formal contours of *Ring*, it appears similar in application to the scheme deemed unconstitutional by *Ring* itself.[45]

The allowance of such broad judicial discretion through override further demonstrates that Alabama courts have not interpreted *Ring* to mean that the sentencing judge is constrained in any real way by the jury's findings. Investigation of other Alabama sentencing decisions reveals that there is no coherent standard for applying override; when it is applied, it is often based on personal judgment or additional judicial findings. Among thirty sentencing orders located for the thirty-six judicial overrides in Alabama between 1981 and 1991, there was no discernible consensus as to the standard used for override: several cases provided no override criteria, and all of the others offered only judge-specific or case-specific criteria.[46] In cases in which the judge did outline criteria for the override, the most common reasons included the finding that "the aggravating circumstances outweighed the miti-

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[41] Amended Sentencing Order, *supra* note 20, at 1 (emphasis added).

[42] *Id.* at 4; *see also id.* at 7–8 ("This was an especially cruel and torturous murder . . . . It would have been humane for them to release the victim . . . [but] they continued to hold her against her will . . . . [T]error and anguish [were] inflicted on the victim by the Defendant.").

[43] Ingrid Holewinski writes that in cases of override, "[e]ven though jurors determine all relevant facts to make their recommendations, judges who use the option must be making additional factual determinations." Holewinski, *supra* note 33, at 236.

[44] The Court in *Ring* questioned the superiority of judicial factfinding and stated that the authors of the Sixth Amendment were not prepared to leave such factfinding to the state. *See* Ring v. Arizona, 122 S. Ct. 2428, 2441 (2002). The *Ring* Court also emphasized the importance of the jury's historical role in making factual determinations, including more subjective judgments requiring an assessment of the defendant's state of mind. *See id.* at 2438.

[45] *See* Adam Liptak, *Fewer Death Sentences Likely If Juries Make Ultimate Decision, Experts Say*, N.Y. TIMES, June 25, 2002, at A21 (quoting David Barber, the district attorney in Birmingham, Alabama, as saying that "[use of judicial override] gives the defendant a pretty good argument that this may be even more of a case of judge-only sentencing than in Arizona").

[46] *See* Russell, *supra* note 37, at 28, 43.

gating ones to a moral certainty," the "heinousness of the crime" (as in *Hodges*), and the "deterrence rationale for capital punishment."[47] These are all subjective judgments made purely by the judge and therefore susceptible to other external factors.[48]

One significant factor influencing the use of override in Alabama is the fact that as elected officials, judges are subject to nonlegal, political pressures.[49] Justice Stevens noted in *Harris v. Alabama* that, as of 1995, Alabama judges had overridden jury recommendations of life without parole to impose the death penalty forty-seven times but had vetoed only five jury recommendations for death.[50] Justice Stevens cited political pressures as one potential cause of such behavior,[51] and Stephen Bright and Patrick Keenan agree, observing that a judge facing election "is more likely to sentence a defendant to death than a jury that heard the same evidence."[52]

Although the Alabama scheme operating in *Ex parte Hodges* may formally remain valid under the existing patchwork of Supreme Court precedent, *Hodges* illustrates that *Ring* exerts little force in tempering judicial discretion or in reinforcing the role of the jury in the context of hybrid sentencing schemes. Justice O'Connor's prediction that *Ring* would provide a basis for challenging hybrid schemes has yet to be fully tested, but the continuing operation of such systems demonstrates the fine line that *Ring*'s narrow holding has drawn between two sentencing schemes lacking any significant practical distinction.

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[47] *Id.* at 31–32. Russell argues that the justifications for override "fall far short of creating a standard" and that the Alabama sentencing scheme "more closely resembles a lottery than a constitutional capital sentencing procedure." *Id.* at 34, 43.

[48] In practice, "[w]here there is no articulated basis given for use of the override and no guiding case law standard," override use would seem "arguably arbitrary." *Id.* at 34; *see also id.* at 35 ("'Guided discretion' is not met by a scheme which permits one judge to employ the override only where aggravating circumstances outweigh mitigating ones 'to a moral certainty,' another judge who need only find a 'reasonable basis' for override, and still another who does not enunciate any standard for overriding the jury verdict. The vast array of approaches the trial courts use is a loud cry to the appellate courts for guidance." (footnote omitted)).

[49] *See id.* at 34–35.

[50] 513 U.S. 504, 521 (1995) (Stevens, J., dissenting); *see also id.* at 521–22 n.8 (citing statistics from Florida and Indiana demonstrating that judges "override juries' life recommendations far more often than their death recommendations").

[51] *Id.* at 521; *see also* Holewinski, *supra* note 33, at 237–38 ("The pressure and politics of elections may lead to higher death rates.").

[52] Stephen B. Bright & Patrick J. Keenan, *Judges and the Politics of Death: Deciding Between the Bill of Rights and the Next Election in Capital Cases*, 75 B.U. L. REV. 759, 793 (1995). In contrast, Delaware judges, who are not elected, overrode jury recommendations of death to impose life imprisonment the first seven times the power of override was used after its adoption in 1991. *Id.* at 794. Bryan Stevenson further suggests that judges may "misconstrue facts or law" when driven by "political pressures or other factors" to override jury recommendations for life. Stevenson, *supra* note 30, at 1149.