

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

Syllabus

BROWN, WARDEN *v.* SANDERSCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 04–980. Argued October 11, 2005—Decided January 11, 2006

In convicting respondent Sanders of, *inter alia*, first-degree murder, the jury found four “special circumstances,” each of which rendered him death eligible under Cal. Penal Code Ann. §190.2. At the penalty phase, the jury was instructed to consider a list of sentencing factors, including “[t]he circumstances of the crime . . . and the existence of any special circumstances found to be true,” §190.3(a), and sentenced him to death. The State Supreme Court invalidated two of the special circumstances on direct appeal, but nonetheless affirmed the conviction and sentence. The Federal District Court subsequently denied Sanders habeas relief, rejecting his claim that the jury’s consideration of invalid special circumstances rendered his death sentence unconstitutional. Reversing, the Ninth Circuit applied the rules for “weighing” States, see *Stringer v. Black*, 503 U.S. 222, rather than “non-weighing” States, see *Zant v. Stephens*, 462 U.S. 862, and found that Sanders had been unconstitutionally deprived of an individualized death sentence.

Held:

1. The requirement that States limit the class of murderers to which the death penalty may be applied, *Furman v. Georgia*, 408 U.S. 238 (*per curiam*), is usually met when the trier of fact finds at least one statutory eligibility factor at either the guilt or penalty phase. Once this narrowing requirement has been satisfied, the sentencer must determine whether an eligible defendant should receive the death penalty; many States channel this function by specifying aggravating factors (sometimes identical to the eligibility factors) that are to be weighed against mitigating considerations. In answering the question confronted here—what happens when the sentencer imposes the death penalty after finding a valid eligibility factor, but

Syllabus

under a scheme in which another eligibility factor is later held invalid—this Court has set forth different rules for so-called weighing and non-weighing States. In a weighing State, the sentencer could consider as aggravation only specified eligibility factors. Where the sentencer relied on an eligibility factor that was later invalidated, the sentencer was erroneously invited to count the invalid factor as weighing in favor of death, thus “skewing” the weighing process, *Stringer, supra*, at 232. Such automatic skewing would not necessarily occur in a non-weighing State, however, which permitted the sentencer to consider aggravating factors different from, or in addition to, the eligibility factors. This weighing/non-weighing scheme seems needlessly complex and incapable of providing for the full range of variations. This Court is henceforth guided by the following rule: An invalidated sentencing factor (whether an eligibility factor or not) will render the sentence unconstitutional by reason of its adding an improper element to the aggravation scale in the weighing process unless one of the other sentencing factors enables the sentencer to give aggravating weight to the same facts and circumstances. Pp. 3–9.

2. The jury’s consideration of invalid special circumstances in Sanders’ case gave rise to no constitutional violation. In California, the “special circumstances” listed in §190.2 are the eligibility factors designed to satisfy *Furman*’s narrowing requirement. If the jury finds the existence of one of those circumstances, it must “take into account” a *separate* list of sentencing factors, including §190.3(a)’s “circumstances of the crime” factor. That factor has the effect of rendering all the specified factors nonexclusive, thus making California (in this Court’s prior terminology) a non-weighing State. Setting aside the weighing/non-weighing dichotomy and applying the more direct analysis set out here, two of the four special circumstances were invalidated, but the remaining two are sufficient to satisfy *Furman*’s narrowing requirement and alone rendered Sanders death eligible. Moreover, all of the facts and circumstances admissible to prove the invalid eligibility factors were also properly adduced as aggravating facts and circumstances under the “circumstances of the crime” sentencing factor. Even if §190.3(a)’s direction to consider “the existence of any special circumstances found to be true” placed special emphasis upon the facts and circumstances relevant to the invalid factors, that impact “cannot fairly be regarded as a constitutional defect in the sentencing process,” *Zant, supra*, at 889. Pp. 9–12.

373 F. 3d 1054, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS,

Syllabus

C. J., and O’CONNOR, KENNEDY, and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion, in which SOUTER, J., joined. BREYER, J., filed a dissenting opinion, in which GINSBURG, J., joined.