

**IN THE SUPREME COURT
STATE OF GEORGIA**

Case No. S23E0967

JAMES ALLYSON LEE,
Appellant

v.

ANTOINE CALDWELL, Warden,
Georgia Diagnostic and Classification Prison,
Appellee

**Brief of the Georgia Association of Criminal Defense Lawyers as
Amicus Curiae**

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Introduction

In any criminal trial, the court's charge to the jury serves the vital role of explaining the law to a group of citizens chosen to apply that law to the facts of the case. The importance of jury instructions to guide that task is especially critical at a capital sentencing hearing, where the defendant's life is at stake. Correct and complete sentencing instructions promote the reliability, fairness, and constitutionality of the resulting penalty. Indeed, this Court has held that instructional error at the sentencing phase of a death penalty case cannot be waived and may be raised at any time, given how "crucial [the capital sentencing charge is] to the outcome of the trial." *Stynchcombe v. Floyd*, 252 Ga. 113, 115 (1984) (internal citations omitted).

When the State of Georgia pursues the death penalty against a defendant, Georgia law requires the jury to be instructed to consider mitigation evidence. Petitioner James Lee's jury was not given that instruction. Instead, the trial court accidentally omitted an entire page of the pattern jury instructions it gave at sentencing, leaving out this critical instruction.

A juror's duty at the sentencing phase of a death penalty trial is vastly different from any other task our judicial system requires of a juror, including the most recent responsibility of the juror at the guilt-or-innocence phase. Because the habeas court disregarded the importance of jury instructions in general and their heightened significance at the sentencing phase of a capital trial, we respectfully urge the Court to grant Lee a certificate of probable cause to appeal.

Interest of Amicus

A frequent friend of this Court, the Georgia Association of Criminal Defense Lawyers (GACDL) is a domestic non-profit professional association whose members regularly execute the only office of the court dignified in the Bill of Rights: defending the life and liberty of the accused against the powers of organized society and ensuring the processes of law that they are due. GACDL's membership comprises both public defenders and private counsel, including criminal defense attorneys who have handled capital cases at all stages of proceedings. GACDL is dedicated to the rule of law, the fair and impartial administration of criminal justice, the improvement of our adversarial system, and the reasoned and

informed advancement of criminal jurisprudence and procedure, and the preservation of our well-established constitutional heritage.

GACDL's Amicus Curiae Committee is a standing committee which submits briefs on issues deemed to be of significance to criminal law, the public, defendants, and defense lawyers throughout Georgia. This is such a case.

Argument and Citations to Authority

This Court's review of Lee's case is needed to correct the habeas court's disregard of the critical role that jury instructions play in a criminal trial, especially in a capital sentencing hearing.

Georgia law requires the trial court to instruct jurors to consider mitigation evidence when deciding whether a capital defendant should live or die. O.C.G.A. § 17-10-30(b); *Hawes v. State*, 240 Ga. 327, 334 (1977). Lee's trial court did not give the required instructions. Rather, the trial court began by charging the jury on how to determine and apply factors in aggravation, leaving the jury completely in the dark about how to determine and apply the potentially mitigating factors.

Despite the trial court's critical omission, the habeas court denied

relief, concluding that jurors could infer from the defense’s presentation of evidence and argument that they were to consider the mitigating evidence in deciding whether to impose the death penalty. The court’s reasoning disregards the essential role that jury instructions play at trial.

The jury charge “is a crucial portion of trial in which jurors are instructed on the applicable law, on how to evaluate the evidence, and on how to deliberate and reach a verdict...” *Sheard v. State*, 300 Ga. 117, 121 (2016) (internal citation omitted). As this Court has explained:

Jury instructions are the lamp to guide the jury’s feet in journeying through the testimony in search of a legal verdict. The office of a charge by the court is to give to the jury such instruction touching the rules of law pertinent to the issues involved in a pending trial as will enable them intelligently to apply thereto the evidence submitted, and from the two constituents law and fact make a verdict.

Brodes v. State, 279 Ga. 435, 438 (2005) (internal quotations and citations omitted).

Georgia law, moreover, expressly mandates that the trial judge “include in his instructions to the jury for it to consider[] any mitigating circumstances” in determining sentence. O.C.G.A. § 17-10-30 (b). Jurors

need such instruction to understand that mitigating evidence should inform their sentencing decision. This Court has recognized the broad scope of mitigating evidence that jurors must be allowed to consider at sentencing. *See, e.g., Barnes v. State*, 269 Ga. 345, 358–359 (1998). Some common examples of mitigating evidence include the life, background, upbringing, and mental health of the accused, or other matters that might persuade a jury to impose a sentence less than death. *See e.g., Head v. Farrell*, 274 Ga. 399, 405 (2001).

Contrary to the habeas court’s supposition, this type of evidence is not typically understood by juries as something they can and must consider at sentencing. Indeed, jurors’ role at sentencing is very different from what they were required to do at the guilt phase. In a capital sentencing hearing, after receiving “appropriate instructions” from the judge, jurors are charged with determining “whether any mitigating or [statutory] aggravating circumstances...exist and whether to recommend mercy for the accused.” O.C.G.A. § 17-10-2 (c). The jury “must be permitted to fully consider evidence that mitigates against a death sentence in order to give a *reasoned moral response* to the defendant’s

background, character and crime.” *Barnes v. State*, 269 Ga. 345, 358 (1998) (emphasis added). This is a distinct task from the jury’s role at the guilt phase, where jurors must determine, as a factual matter, whether the State has proven each element of the crime beyond a reasonable doubt.

The habeas court’s ruling disregards this critical difference. Instead, the court presumed that jurors knew they should consider mitigating evidence simply because the defense presented a mitigation case and argued it in closing. But this reasoning ignores the critical role that jury instructions play in producing reliable verdicts based on the law and the evidence, and the critical nature of capital sentencing instructions in particular, which provide essential guidance in a uniquely challenging task for the jury. The habeas court’s disregard of the essential nature of instructions at the penalty phase of a capital trial casts instructions – a mandatory task for the trial court – as an essentially meaningless exercise that has little to no bearing on the outcome. This Court’s precedents do not support that approach.

Conclusion

The habeas court failed to recognize the importance of the mandatory instruction that was inadvertently omitted from Lee's sentencing charge. The omission of that charge was a critical error that warrants this Court's consideration. GACDL respectfully submits that the Court should grant Lee's application for a certificate of probable cause and hear the case on its merits.

Respectfully submitted this 2nd day of June 2023.

/s/ Amanda J. Walker

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Certificate of Service

This is to certify that I have served a copy of this document to the following:

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