

**04-928 OREGON V. GUZEK**

DECISION BELOW:86 P3d 1106

LOWER COURT CASE NUMBER: S45272

**QUESTIONS PRESENTED:**

In Franklin v. Lynaugh, this Court concluded that a capital defendant does not have a constitutional right to an instruction telling the jury in the penalty phase to consider "residual doubt" about defendant's guilt. Most state and federal appellate courts have read this decision more broadly than its precise holding and have concluded that a capital defendant has no constitutional right to offer evidence and argue in a penalty-phase proceeding that he should receive a sentence less than death because he continues to assert his innocence of the underlying crime. The Oregon Supreme Court, however, held in this case that a capital defendant has a federal constitutional right to present in a penalty-phase proceeding alibi evidence that casts doubt on his guilt. The question presented is:

Does a capital defendant have a right under the Eighth and Fourteenth Amendments to the United States Constitution to offer evidence and argument in support of a residual-doubt claim - that is, that the jury in a penalty-phase proceeding should consider doubt about the defendant's guilt in deciding whether to impose the death penalty?

CERT. GRANTED 4/25/2005