

04-980 BROWN V. SANDERS

DECISION BELOW:373 F3d 1054

LOWER COURT CASE NUMBER: 01-99017

QUESTIONS PRESENTED:

Under California's capital statutory scheme, in the guilt phase of trial, the sentencer determines whether "special circumstances" exist to make a defendant eligible for the death penalty. In a separate penalty phase, the jury considers and weighs a single list of eleven "open-ended" factors including, as one factor, "the circumstances of the crime of which the defendant was convicted in the present proceeding and the existence of any special circumstances found to be true." The factors are not labeled as aggravating or mitigating, but direct the jury's attention to relevant subject matter for the determination of sentence. The jury is required to impose the death penalty only if it is convinced that death is appropriate under all the factors even if aggravation outweighs mitigation.

1. Is the California death penalty statute a "weighing statute" for which the state court is required to determine that the presence of an invalid special circumstance was harmless beyond a reasonable doubt as to the jury's determination of penalty?
2. Was an affirmative answer to the previous question dictated by precedent pursuant to *Teague v. Lane*, 489 U.S. 288 (1989), at the time the conviction in this case was final?
3. If an affirmative answer to the first question was dictated by precedent, was it necessary for the state supreme court to specifically use the phrases "harmless error" or "reasonable doubt" in determining that there was no "reasonable possibility" that the invalid special circumstance affected the jury's sentence selection?

CERT. GRANTED 3/28/2005

LIMITED TO QUESTIONS 1 AND 3 PRESENTED BY THE PETITION.