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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

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BUCHANAN *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 96–8400. Argued November 3, 1997— Decided January 21, 1998

Following petitioner Buchanan's conviction of the capital murders of his father, stepmother, and two brothers, the prosecutor sought the death penalty based on Virginia's aggravating factor that the crime was vile. During the sentencing hearing, there were two days of testimony as to Buchanan's troubled family background and mental and emotional problems, and the prosecutor and defense counsel both made extensive arguments on the mitigating evidence and the effect it should be given in sentencing. The trial court instructed the jury, *inter alia*, that if it found beyond a reasonable doubt that Buchanan's conduct was vile, "then you may fix the punishment . . . at death," but "if you believe from all the evidence that . . . death . . . is not justified, then you shall fix the punishment . . . at life imprisonment." The court refused Buchanan's request to give four additional instructions on particular statutory mitigating factors and a general instruction on the concept of mitigating evidence. The jury returned a verdict of death, the trial court imposed that sentence, and the Virginia Supreme Court affirmed. The Federal District Court then denied Buchanan habeas corpus relief, and the Fourth Circuit affirmed.

Held: The absence of instructions on the concept of mitigation and on particular statutorily defined mitigating factors did not violate the Eighth and Fourteenth Amendments. In arguing to the contrary, Buchanan fails to distinguish between the differing constitutional treatment this Court has accorded the two phases of the capital sentencing process: the eligibility phase, in which the jury narrows the class of death-penalty-eligible defendants, and the selection phase here at issue, in which the jury determines whether to impose a death sentence on an eligible defendant. See, *e.g.*, *Tuilaepa* v. *California*, 512

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U. S. 967, 971–972. In the selection phase, the state may shape and structure the jury's consideration of mitigating evidence, so long as restrictions on the sentencing determination do not preclude the jury from giving effect to any such evidence. *E.g.*, *Penry* v. *Lynaugh*, 492 U. S. 302, 317–318. The determinative standard is whether there is a reasonable likelihood that the jury has applied its instructions in a way that prevents consideration of constitutionally relevant evidence. *E.g.*, *Boyde* v. *California*, 494 U. S. 370, 380. The instructions here did not violate these constitutional principles. This conclusion is confirmed by the context in which the instructions were given. The court directed the jurors to base their decision on "all the evidence" and to impose a life sentence if they believed the evidence so warranted, there was extensive testimony as to Buchanan's family background and mental and emotional problems, and counsel made detailed arguments on the mitigating evidence. Because the parties in effect *agreed* that there was substantial mitigating evidence and that the jury had to weigh that evidence against Buchanan's conduct in making a discretionary decision on the appropriate penalty, there is not a reasonable likelihood that the jurors understood the instructions to preclude consideration of relevant mitigating evidence. Pp. 5–9.

103 F. 3d 344, affirmed.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. SCALIA, J., filed a concurring opinion. BREYER, J., filed a dissenting opinion, in which STEVENS and GINSBURG, JJ., joined.