

# Death Penalty Mitigation

---

STONE RIVER LAW | JUNE 2024

# A Brief History

---

## FURMAN V. GEORGIA

- Consolidated with Jackson v. Georgia and Branch v. Texas.
- Decided in 1972.
- 5-4 decision, but each justice had different reasoning.
- Resulted in a *de facto* moratorium of capital punishment, which many people thought would become permanent.

## GREGG V. GEORGIA

- Decided along with Proffitt v. Florida, Jurek v. Texas, Woodson v. North Carolina, and Roberts v. Louisiana.
- Decided in 1976.
- Dealt with capital punishment statutes enacted by thirty-five states post-Furman.
- Ended the *de facto* moratorium caused by Furman.

# A Brief History – Cont.

---

## GREGG V. GEORGIA AND PROFFITT V. FLORIDA

- Gregg v. Georgia: At the innocence/guilt phase, the jury must find that one of ten aggravating factors existed beyond a reasonable doubt. At the sentencing phase, the jury *may* consider mitigating evidence.
- Proffitt v. Florida: At sentencing, the jury must determine that an aggravating factor existed. The jury must then weigh mitigating evidence against statutory aggravating factors.

## JUREK V. TEXAS

- Jurek v. Texas: The Texas statute for capital murder was narrowed to certain circumstances, and the prosecution was not required to seek the death penalty. If they did, the jury had to consider special issues. If the jury found that all special issues existed, the accused was mandatorily sentenced to death.

# A Brief History – Cont.

---

## WOODSON V. NORTH CAROLINA AND ROBERTS V. LOUISIANA

- Woodson v. North Carolina: After a jury found a person guilty of first-degree murder, the death penalty was mandatorily imposed.
- Roberts v. Louisiana: If a jury found that the defendant had a specific intent to kill or inflict great bodily harm within five narrowly defined kinds of homicide, the death penalty was mandatorily imposed.



“The new Georgia sentencing procedures, by contrast, focus the jury's attention on the particularized nature of the crime and the particularized characteristics of the individual defendant. While the jury is permitted to consider any aggravating or mitigating circumstances, it must find and identify at least one statutory aggravating factor before it may impose a penalty of death. In this way the jury's discretion is channeled.”

Gregg v. Georgia, 428 U.S. at 206-07

# Lockett v. Ohio

---

## THE FACTS

- Sandra Lockett was the getaway driver for a pawnshop robbery that resulted in the death of the pawnshop owner.
- Ms. Lockett was charged with aggravated murder for her role in the robbery, under the doctrine of felony murder.
- Under Ohio law, if the sentencing judge or jury didn't specifically find one of three mitigating factors, the death penalty was mandatorily imposed.

## THE RULING

“[W]e conclude that the Eighth and Fourteenth Amendments require that the sentencer, in all but the rarest kind of capital case, not be precluded from considering, *as a mitigating factor*, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death.”

Lockett v. Ohio, 438 U.S. at 604, emphasis in original

# Categorical Mitigation

- *Atkins v. Virginia*: “[T]he mentally retarded should be categorically excluded from execution.”
- *Roper v. Simmons*: “The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed.”
- *Madison v. Alabama*: “The Eighth Amendment ... prohibits the execution of a prisoner whose mental illness prevents him from ‘rationally understanding’ why the State seeks to impose that punishment.”

# Mitigation Caselaw

---

- Mitigating factors can be “potentially infinite”. *Ayers v. Belmontes*, 549 U.S. at 21.
- A sentencing judge may not refuse to consider any relevant mitigating evidence as a matter of law. *Eddings v. Oklahoma*, 455 U.S. at 113-15.
- Mitigating evidence is relevant if it tends to prove or disprove “some fact or circumstance which a fact-finder could reasonably deem to have mitigating value”. *McKoy v. North Carolina*, 494 U.S. at 440.
- Mitigating evidence need not relate specifically to the culpability of the defendant. *Skipper v. South Carolina*, 476 U.S. at 4.
- Mitigation requires no nexus to the crime; some things are inherently mitigating. *Tennard v. Dretke*, 542 U.S. at 287.
- For trial counsel to be effective, they must thoroughly investigate mitigation evidence. *Andrus v. Texas*, 140 S. Ct. 1875
- Jurors are not required to unanimously agree on mitigating circumstances. *Mills v. Maryland*, 486 U.S. at 376.



# Does it work?

---

- Mitigation can work.
- Jurors don't always understand mitigation instructions.
- According to a 2001 study, almost half of capital jurors thought that mitigating factors could only be considered if all jurors agreed that it had been proved beyond a reasonable doubt.

TABLE 4  
 AGGRAVATING AND MITIGATING FACTORS  
 RELATING TO THE DEFENDANT  
 (Survey Question IV.B.1)

	Did or would this factor make you . . . likely to vote for death (% responding)				
	much more	slightly more	just as	slightly less	much less
defendant had a history of violent crime (n=144)	28.5	24.3	46.5	0.7	0.0
defendant would be a well-behaved inmate (n=141)	0.0	0.7	73.1	17.0	9.2
defendant might be a danger to society in the future (n=140)	37.9	20.0	40.7	1.4	0.0
defendant had no previous criminal record (n=135)	4.4	5.2	70.4	13.3	6.7
defendant was mentally retarded (n=149)	0.7	2.0	23.5	29.5	44.3
defendant was under 18 at the time of the crime (n=147)	0.7	2.7	55.1	27.9	13.6
defendant was an alcoholic (n=146)	2.7	2.1	81.5	11.0	2.7
defendant was a drug addict (n=144)	4.2	7.6	78.5	7.6	2.1
defendant had a history of mental illness (n=146)	1.4	2.1	40.4	29.5	26.7
defendant had a loving family (n=144)	0.7	0.7	79.9	15.3	3.5
defendant was a stranger in the community (n=143)	1.4	2.8	93.7	1.4	0.7
defendant had a background of extreme poverty (n=146)	0.0	1.4	83.6	12.3	2.7
defendant had been seriously abused as a child (n=146)	0.0	1.4	61.6	26.7	10.3
defendant had been in institutions but was never given any real help (n=139)	0.7	3.6	47.5	28.1	20.1
defendant did not express any remorse (n=138)	21.7	18.1	56.5	2.9	0.7
defendant's accomplice received lesser punishment in exchange for testimony (n=146)	6.2	7.5	69.2	11.0	6.2
juror held lingering doubt over the defendant's guilt (n=149)	1.3	1.3	20.1	16.8	60.4