

Syllabus

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

Syllabus

BREWER v. QUARTERMAN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

No. 05–11287. Argued January 17, 2007—Decided April 25, 2007

Petitioner Brewer was convicted of murder committed during the course of a robbery. At sentencing, he introduced mitigating evidence of his mental illness, his father’s extensive abuse of him and his mother, and his substance abuse. His counsel made the strategic decision not to present any expert psychological or psychiatric testimony. The trial judge rejected all of Brewer’s proposed instructions designed to give effect to the mitigating evidence he presented, instructing the jury instead to answer only two special issues: whether his conduct was committed deliberately and with the reasonable expectation it would result in his victim’s death and whether it was probable he would commit future violent acts constituting a continuing threat to society. In closing argument, the prosecutor emphasized that Brewer’s violent response to physical abuse by his father supported an affirmative answer to the “future dangerousness” special issue; he deemphasized any mitigating effect such evidence should have, stressing that the jurors lacked the power to exercise moral judgment and, in determining Brewer’s sentence, must answer the questions according to the evidence. Ultimately, the jury answered both special issues in the affirmative, and Brewer was sentenced to death. The Texas Court of Criminal Appeals (CCA) affirmed on direct appeal and denied Brewer’s application for state postconviction relief. He then filed a federal habeas petition. Following supplemental briefing concerning *Tennard v. Dretke*, 542 U. S. 274, the District Court granted conditional relief, but the Fifth Circuit reversed and rendered its own judgment denying the petition.

Syllabus

Held: Because the Texas capital sentencing statute, as interpreted by the CCA, impermissibly prevented Brewer’s jury from giving meaningful consideration and effect to constitutionally relevant mitigating evidence, the CCA’s decision denying Brewer relief under *Penry v. Lynaugh*, 492 U. S. 302 (*Penry I*), was both “contrary to” and “involved an unreasonable application of, clearly established Federal law, as determined [this] Court,” 28 U. S. C. §2254(d). Pp. 5–9.

(a) Brewer’s trial was infected with the same constitutional error that occurred in *Penry I*, where the Court held that jury instructions that merely articulated the Texas special issues, without directing the sentencing jury “to consider fully Penry’s mitigating evidence as it bears on his personal culpability,” did not provide an adequate opportunity for the jury to decide whether that evidence might provide a legitimate basis for imposing a sentence other than death. 492 U. S., at 323. The Court characterized Penry’s mental-retardation and childhood-abuse evidence as a “two-edged sword” that “diminish[ed] his blameworthiness for his crime even as it indicat[ed] a probability” of future dangerousness. *Id.*, at 324. Brewer’s mitigating evidence similarly served as a “two-edged sword.” Even if his evidence was less compelling than Penry’s, that does not justify the CCA’s refusal to apply *Penry I* here. It is reasonably likely the jurors accepted the prosecutor’s argument to limit their decision to whether Brewer had acted deliberately and was likely a future danger, disregarding any independent concern that his troubled background might make him undeserving of death. Also unpersuasive is the Fifth Circuit’s explanation that Brewer’s lack of expert evidence and that court’s precedents holding that mental retardation, but not mental illness, can give rise to a *Penry I* violation prompted the Circuit’s reversal of the grant of habeas relief. This Court has never suggested that the question whether the jury could have adequately considered mitigating evidence is a matter purely of quantity, degree, or immutability. Rather, the Court has focused on whether such evidence has mitigating relevance to the special issues and the extent to which it may diminish a defendant’s moral culpability for the crime. See *id.*, at 322. Pp. 5–7.

(b) Under the narrowest possible reading of *Penry I*, Texas’ special issues do not provide for adequate jury consideration of mitigating evidence that functions as a “two-edged sword.” The Fifth Circuit’s mischaracterization of the law as demanding only that such evidence be given “sufficient mitigating effect,” and improperly equating “sufficient effect” with “full effect,” is not consistent with the reasoning of *Penry v. Johnson*, 532 U. S. 782 (*Penry II*), which issued after Penry’s resentencing (and before the Fifth Circuit’s opinion in this case). Like the “constitutional relevance” standard rejected in *Tennard*, a

Syllabus

“sufficient effect” standard has “no foundation” in this Court’s decisions. 542 U. S., at 284. For the reasons explained in this case and in *Abdul-Kabir*, *ante*, p. ____, the Circuit’s conclusions that Brewer’s mental-illness and substance-abuse evidence could not constitute a *Penry* violation, and that troubled-childhood evidence may, because of its temporary character, fall sufficiently within the special issues’ ambit, fail to heed this Court’s repeated warnings about the extent to which the jury must be allowed not only to consider mitigating evidence, or to have such evidence before it, but to respond to it in a reasoned, moral manner and assign it weight in deciding whether a defendant truly deserves death. Pp. 7–9.

442 F. 3d 273, reversed.

STEVENS, J., delivered the opinion of the Court, in which KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. ROBERTS, C. J., filed a dissenting opinion, in which SCALIA, THOMAS, and ALITO, JJ., joined. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined, and in which ALITO, J., joined as to Part I.