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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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SATTAZAHN *v.* PENNSYLVANIA

CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

No. 01–7574. Argued November 4, 2002—Decided January 14, 2003

Under Pennsylvania law, (1) the verdict in the penalty phase of capital proceedings must be death if the jury unanimously finds at least one aggravating circumstance and no mitigating circumstance or one or more aggravating circumstances outweighing any mitigating circumstances, but it must be life imprisonment in all other instances; and (2) the court may discharge a jury if it determines that the jury will not unanimously agree on the sentence, but the court must then enter a life sentence. When petitioner's penalty-phase jury reported to the trial judge that it was hopelessly deadlocked 9-to-3 for life imprisonment, the court discharged the jury and entered a life sentence. On appeal, the Pennsylvania Superior Court reversed petitioner's first-degree murder conviction and remanded for a new trial. At the second trial, Pennsylvania again sought the death penalty and the jury again convicted petitioner, but this time the jury imposed a death sentence. In affirming, the Pennsylvania Supreme Court found that neither the Fifth Amendment's Double Jeopardy Clause nor the Fourteenth Amendment's Due Process Clause barred Pennsylvania from seeking the death penalty at the retrial.

Held:

1. There was no double-jeopardy bar to Pennsylvania's seeking the death penalty on retrial. Pp. 4–8, 11–13.

(a) Where, as here, a defendant who is convicted of murder and sentenced to life imprisonment succeeds in having the conviction set aside on appeal, jeopardy has not terminated, so that a life sentence imposed in connection with the initial conviction raises no double-jeopardy bar to a death sentence on retrial. *Stroud* v. *United States,* 251 U. S. 15. While, in the line of cases commencing with *Bullington* v. *Missouri,* 451 U. S. 430, this Court has found that the Double Jeopardy Clause applies to capital-sentencing proceedings that "have the hall-

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marks of the trial on guilt or innocence," *id.,* at 439, the relevant inquiry in that context is not whether the defendant received a life sentence the first time around, but whether a first life sentence was an "acquittal" based on findings sufficient to establish legal entitlement to the life sentence—*i.e.*, findings that the government failed to prove one or more aggravating circumstances beyond a reasonable doubt, *Arizona* v. *Rumsey,* 467 U. S. 203, 211. Pp. 4–7.

(b) Double-jeopardy protections were not triggered when the jury deadlocked at petitioner's first sentencing proceeding and the court prescribed a life sentence pursuant to Pennsylvania law. The jury in that first proceeding was deadlocked and made no findings with respect to the alleged aggravating circumstance. That result, or nonresult, cannot fairly be called an acquittal, based on findings sufficient to establish legal entitlement to a life sentence. Neither was the entry of a life sentence by the judge an "acquittal." Under Pennsylvania's scheme, a judge has no discretion to fashion a sentence once he finds the jury is deadlocked, and he makes no findings and resolves no factual matters. The Pennsylvania Supreme Court also made no finding that the Pennsylvania Legislature intended the statutorily required entry of a life sentence to create an "entitlement" even without an "acquittal." Pp. 7–8.

(c) Dictum in *United States* v. *Scott,* 437 U. S. 82, 92, does not support the proposition that double jeopardy bars retrial when a defendant's case has been fully tried and the court on its own motion enters a life sentence. The mere prospect of a second capital-sentencing proceeding does not implicate the perils against which the Double Jeopardy Clause seeks to protect. Pp. 11–13.

2. The Due Process Clause also did not bar Pennsylvania from seeking the death penalty at the retrial. Nothing in §1 of the Fourteenth Amendment indicates that any "life" or "liberty" interest that Pennsylvania law may have given petitioner in the first proceeding's life sentence was somehow immutable, and he was "deprived" of any such interest only by operation of the "process" he invoked to invalidate the underlying first-degree murder conviction. This Court declines to hold that the Due Process Clause provides greater double-jeopardy protection than does the Double Jeopardy Clause. Pp. 13–15.

563 Pa. 533, 763 A. 2d 359, affirmed.

SCALIA, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, IV, and V, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, and THOMAS, JJ., joined, and an opinion with respect to Part III, in which REHNQUIST, C. J., and THOMAS, J., joined. O'CONNOR, J., filed an opinion concurring in part and concurring in the judgment. GINSBURG, J., filed a dissenting opinion, in which STEVENS, SOUTER, and BREYER, JJ., joined.