

## 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

**BEARD, SECRETARY, PENNSYLVANIA DEPARTMENT  
OF CORRECTIONS, ET AL. v. BANKS****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE THIRD CIRCUIT**

No. 02–1603. Argued February 24, 2004—Decided June 24, 2004

After respondent’s murder conviction and death sentence were upheld by the Pennsylvania Supreme Court, this Court decided *Mills v. Maryland*, 486 U. S. 367, and *McKoy v. North Carolina*, 494 U. S. 433, in which it held invalid capital sentencing schemes requiring juries to disregard mitigating factors not found unanimously. After respondent’s state postconviction *Mills* claim was rejected by the State Supreme Court on the merits, he turned to the federal courts. Ultimately, the Third Circuit applied the analytical framework set forth in *Teague v. Lane*, 489 U. S. 288, under which federal habeas petitioners may not avail themselves of new rules of constitutional criminal procedure outside two narrow exceptions; concluded that *Mills* did not announce a new rule and therefore could be applied retroactively; and granted respondent relief.

*Held:* Because *Mills* announced a new rule of constitutional criminal procedure that does not fall within either *Teague* exception, its rule cannot be applied retroactively. Pp. 4–14.

(a) *Teague* analysis involves a three-step process requiring a court to determine when a defendant’s conviction became final; whether, given the legal landscape at the time the conviction became final, the rule sought to be applied is actually new; and, if so, whether it falls within either of two exceptions to nonretroactivity. P. 4.

(b) Respondent’s conviction became final before *Mills* was decided. The normal rule for determining a state conviction’s finality for retroactivity review—when the availability of direct appeal to the state courts has been exhausted and the time for filing a certiorari petition has elapsed or a timely petition has been finally denied—applies here. That the Pennsylvania Supreme Court considered the merits of

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respondent's *Mills* claim on collateral review does change his conviction's finality to a date subsequent to *Mills*. Pp. 4–6.

(c) *Mills* announced a new rule. In reaching its conclusion in *Mills* and *McKoy*, this Court relied on a line of cases beginning with *Lockett v. Ohio*, 438 U. S. 586. *Lockett*'s general rule that the sentencer must be allowed to consider any mitigating evidence could be thought to support the conclusion in *Mills* and *McKoy* that capital sentencing schemes cannot require juries to disregard mitigating factors not found unanimously, but it did not mandate the *Mills* rule. Each of the cases relied on by *Mills* (and *McKoy*) considered only obstructions to the sentencer's ability to consider mitigating evidence. *Mills*' innovation rests with its shift in focus to individual jurors. Moreover, there is no need to guess whether reasonable jurists could have differed as to whether the *Lockett* line of cases compelled *Mills*. Four dissenting Justices in *Mills* reasoned that because nothing prevented the jury from hearing the mitigating evidence, *Lockett* did not control; and three dissenting Justices in *McKoy* concluded that *Lockett* did not remotely support the new focus on individual jurors. Because the *Mills* rule broke new ground, it applies to respondent on collateral review only if it falls under a *Teague* exception. Pp. 6–10.

(d) The *Mills* rule does not fall within either exception. There is no argument that the first exception applies here. And this Court has repeatedly emphasized the limited scope of the second exception—“for watershed rules of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding,” *O'Dell v. Netherland*, 521 U. S. 151, 157—which “is clearly meant to apply only to a small core of rules requiring observance of those procedures that . . . are implicit in the concept of ordered liberty,” *ibid.* This Court has yet to find a new rule that falls under this exception. In providing guidance as to what might do so, the Court has repeatedly, and only, referred to the right-to-counsel rule of *Gideon v. Wainwright*, 372 U. S. 335, which “altered [the Court's] understanding of the *bedrock procedural elements* essential to the fairness of a proceeding,” *Sawyer v. Smith*, 497 U. S. 227, 242. The Court has not hesitated to hold less sweeping and fundamental rules outside the exception. See, e.g., *O'Dell v. Netherland*, *supra*. While *Mills* and *McKoy* were decided to avoid potentially arbitrary impositions of the death sentence, the *Mills* rule has “none of the primacy and centrality of the rule adopted in *Gideon*,” *Saffle v. Parks*, 494 U. S. 484, 495. It applies narrowly and works no fundamental shift in the Court's “understanding of the *bedrock procedural elements*” essential to fundamental fairness, *O'Dell*, *supra*, at 167. Pp. 10–13.

316 F. 3d 228, reversed and remanded.

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