

The Burger Court Opinion Writing Database

Spaziano v. Florida

468 U.S. 447 (1984)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 19, 1984

Re: 83-5596 - Spaziano v. Florida

Dear Harry:

I join.

Regards,

A handwritten signature in black ink, appearing to be "Lewis", written in a cursive style.

Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 19, 1983

No. 83-5596

Spaziano v. Florida

Dear Harry,

I will vote to grant in this
case.

Sincerely,

A handwritten signature in cursive script, appearing to read "Blackmun", is written below the word "Sincerely,".

Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 30, 1984

No. 83-5596

Spaziano v. Florida

Dear John,

Thurgood, you and I are in dissent
in the above. Would you mind "oinking"
for us dissenters?

Sincerely,



Justice Stevens

Copy to Justice Marshall

22:0A 1- YMH AG

1002
200

Supreme Court of the United States
Washington, D. C. 20543

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN 18 P1:08

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 18, 1984

Spaziano v. Florida
No. 83-5596

Dear Harry:

I agree with your analysis of the lesser-included offense issue in your letter of June 15 to Byron and Bill Rehnquist, and will therefore be joining Part II of your opinion in the above. Of course, I will await John's dissent as to the other issues in this case.

Sincerely,



Justice Blackmun
Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

June 27, 1984

84 JUN 27 11 35

No. 83-5596

Spaziano v. Florida

Dear John,

Please join me in your opinion
concurring in part and dissenting in
part.

Sincerely,



Justice Stevens

Copies to the Conference

✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 15, 1984

Re: 83-5596 - Spaziano v. Florida

Dear Harry,

Re p. 8 of your circulating draft, I agree that Beck requires no more than extending a choice to the defendant. But you strongly indicate that Beck requires an instruction if the defendant waives. I have my doubts about that and would rather not foreclose it. Otherwise, I join your opinion.

Sincerely yours,



Justice Blackmun

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

Circulated: **JUN 19 1984**

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-5596

**JOSEPH ROBERT SPAZIANO, PETITIONER v.
FLORIDA**

**ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF FLORIDA**

[June —, 1984]

JUSTICE WHITE, concurring in part and dissenting in part.

I join the Court's opinion and judgment except for the dictum on page 8 of the opinion indicating that *Beck v. Alabama*, 447 U. S. 625 (1980) requires a state court in the trial of a capital case to permit the defendant to waive the statute of limitations and to give a lesser-included-offense instruction as to an offense that would otherwise be barred.

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

74 JUN 22 P2:46

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice White

Circulated: _____

Recirculated: JUN 22 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-5596

JOSEPH ROBERT SPAZIANO, PETITIONER *v.*
FLORIDA

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF FLORIDA

[June —, 1984]

JUSTICE WHITE, with whom JUSTICE REHNQUIST joins,
concurring in part and concurring in the judgment.

I join the Court's opinion and judgment except for the dictum on page 8 of the opinion indicating that *Beck v. Alabama*, 447 U. S. 625 (1980), requires a state court in the trial of a capital case to permit the defendant to waive the statute of limitations and to give a lesser-included-offense instruction as to an offense that would otherwise be barred.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 14, 1983

Re: No. 83-5596-Spaziano v. Florida

Dear Harry:

Please join me in your dissent.

Sincerely,



T.M.

Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 27, 1984

Re: No. 83-5596-Spaziano v. Florida

Dear John:

Please join me in your opinion concurring and dissenting.

Sincerely,

T.M.
T.M.

Justice Stevens

cc: The Conference

Justice Blackmun's dissent presents the "lesser included offense" issue forcefully but he fails to note that the Court has refused to grant cert on this issue in this case once before. I recommend that you not join this dissent.

Rob

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Blackmun

Circulated: DEC 14 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

JOSEPH ROBERT SPAZIANO v. FLORIDA

ON PETITION FOR WRIT OF CERTIORARI TO SUPREME COURT OF FLORIDA

No. 83-5596. Decided December —, 1983

The petition for certiorari is denied.

JUSTICE BLACKMUN, dissenting.

The Court today again declines to review a case which, in my view, raises a serious legal issue going to the heart of the constitutionality of Florida's capital murder trial and sentencing procedures. I therefore dissent.

Petitioner was tried by a jury for the capital offense of first-degree murder. By the time petitioner was indicted, the statute of limitations had run on all lesser included noncapital offenses. The trial judge refused to instruct the jury as to the lesser included offenses unless petitioner waived the statute. Petitioner refused to do this.

The jury found petitioner guilty of first-degree murder, but recommended that he be sentenced to life imprisonment. The trial judge overrode the jury's recommendation and sentenced petitioner to death. On appeal, the Supreme Court of Florida affirmed the conviction, but vacated the death sentence because of a perceived violation of *Gardner v. Florida*, 430 U. S. 349 (1977). See *Spaziano v. State*, 393 So. 2d 1119 (1981). With three Justices dissenting, this Court denied certiorari. 454 U. S. 1037 (1981).

Petitioner's hearing on remand was limited to review by the trial judge of a new presentence investigation report and an opportunity for petitioner to respond to information contained in that report. The trial judge reimposed the death sentence and the Florida Supreme Court, with one judge dissenting, affirmed. *Spaziano v. State*, 433 S. 2d 508 (1983).

Petitioner seeks review of two issues. First, he challenges the trial judge's refusal to instruct the jury on lesser

Still
Deny

no instructions as to lesser included non-capital offenses

Refused to agree

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN 13 AM 11:37

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Blackmun

Circulated: JUN 13 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-5596

JOSEPH ROBERT SPAZIANO, PETITIONER
v. FLORIDA

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF FLORIDA

[June —, 1984]

JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents questions regarding the administration of Florida's capital sentencing statute. In particular, petitioner challenges the trial court's failure to instruct the jury on lesser included offenses of capital murder. He also challenges the court's imposition of a sentence of death when the jury had recommended life. We conclude that on the facts of this case, it was not error for the trial judge to refuse to give the lesser included offense instruction and that there is no constitutional requirement that the jury's recommendation of life be final. We also reject petitioner's argument that, as applied in this case, the Florida standards for overriding a jury's sentencing recommendation are so broad and vague as to violate the constitutional requirement of reliability in capital sentencing.

I

Petitioner Joseph Robert Spaziano was indicted and tried for first-degree murder. The indictment was brought two years and one month after the alleged offense. Under the Florida statute of limitations in effect at the time of the alleged offense, August 1973, the limitations period for noncapital offenses was two years. Fla. Stat. § 932.465(2)

*new to
JPS dissent*

Reproduced from the Collections of the Manuscript Division, Library of Congress

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 22, 1984

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 83-5596, Spaziano v. Florida

No. 83-6611, Gibson v. Idaho

Petitioner was convicted of first degree murder, which in Idaho includes the offense of aiding and abetting in first degree murder. The murder occurred after a dispute had resulted in the death of another victim. Petitioner was tried for the first murder in the State of Washington and was found not guilty. The evidence at this trial indicated that petitioner and another person (petitioner in No. 83-6653) both participated in knocking the victim out, driving with her to Idaho, and there strangling her. The trial court concluded that the evidence established that petitioner either committed the murder or aided and abetted in its commission. It also found as an aggravating circumstance that petitioner exhibited an utter disregard for human life. The Idaho S.Ct. rejected an argument that under Enmund v. Florida, 458 U.S. 782 (1982), petitioner could not be sentenced to death. It found no doubt that the evidence established that petitioner intended the victim to be killed in order to conceal the circumstances of the death of the earlier victim.

Petitioner presents three claims: 1) imposition of the death sentence by a judge is unconstitutional; 2) admission of evidence of the earlier murder violated the Double Jeopardy Clause; and 3) imposition of death for aiding and abetting first degree murder violated the requirements of Enmund v. Florida.

Spaziano disposes of the first claim. I see no merit to the second. The fact that petitioner had been acquitted of the first murder was not inconsistent with a verdict of guilty of the second murder. The jury could have declined to convict for a number of reasons, including questions about whether jurisdiction was proper in the State of Washington. The evidence the State introduced was not an effort to relitigate the issues decided in the earlier case. It was simply relevant to the scheme alleged in the second case. Finally, although no one mentions it, the dual-sovereign exception to the Double Jeopardy Clause (urged by the respondent in No. 83-6653, involving the other participant in the murder), seems to dispose of any Double Jeopardy concerns.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 22, 1984

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 83-5596, Spaziano v. Florida

No. 83-6653, Paradis v. Idaho

Petitioner in this case is the other defendant charged in connection with the murder discussed in No. 83-6611. He presents two of the three claims advanced by the petitioner in No. 83-6611: 1) introduction of evidence of the murder for which he was acquitted in the State of Washington violated the Double Jeopardy Clause; and 2) the Constitution requires that the death sentence be imposed, if at all, by a jury. For the reasons discussed in connection with No. 83-6611, I see no merit to petitioner's claims and shall vote to deny.

H.A.B.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 22, 1984

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 83-5596, Spaziano v. Florida

No. 83-6195, Dobbert v. Strickland

Petitioner was convicted of the first-degree murder of his nine-year-old daughter. The jury recommended life imprisonment, but the trial judge sentenced petitioner to death. The Florida S.Ct. affirmed.

Petitioner challenges the Florida jury-override procedure as a violation of the Double Jeopardy Clause. He also insists that the Florida standard for allowing a trial judge to override a jury's recommendation of life was not met. Finally, he challenges the prosecution's systematic use of peremptory challenges to exclude death-scrupled jurors. Petitioner did not object at trial to the prosecution's challenges, but the Florida S.Ct. addressed the claim and found it meritless.

Spaziano disposes of petitioner's challenges to the jury-override procedure. The procedure presents no Double Jeopardy problem, and Florida's application of its override standard in individual cases will not be second-guessed as long as the sentence otherwise is constitutionally acceptable. Here, as in Spaziano, it appears that the trial court had a sufficient basis for its decision to sentence petitioner to death--two statutory aggravating circumstances and no mitigating circumstances. The aggravating circumstances were that the murder was committed to avoid lawful arrest and that it was especially heinous and cruel.

The peremptory challenge issue is becoming increasingly familiar. While we may eventually find it appropriate to take up the issue, it might be better to do so in the racial discrimination context than in the context of a Witherspoon claim.

I shall vote to deny.

H.A.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 22, 1984

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 83-5596, Spaziano v. Florida

No. 83-817) Wainwright v. Douglas
No. 83-995) Douglas v. Wainwright

Respondent in No. 83-817/Petitioner in No. 83-995 was convicted of capital murder. During the testimony of the eyewitness, the court, over the objection of the defendant, cleared the courtroom of all members of the public except members of the families of the defendant and of the victim, and except representatives of the press. The jury found the defendant guilty, but recommended that he be sentenced to life imprisonment. The trial court imposed a sentence of death. The Florida S.Ct. affirmed.

The CA 11 granted habeas relief on the ground of ineffective assistance of counsel. These petitions were held for No. 82-1554, Strickland v. Washington. JUSTICE O'CONNOR recommended that No. 83-817 be GVR'd in light of Strickland. Because the petition in No. 83-995 raised issues that warranted a hold for No. 83-321, Waller v. Georgia, and Spaziano, however, she recommended that the GVR not be issued until after Spaziano and Waller were decided. The Conference voted to hold both petitions for Spaziano.

Petitioner's claim in No. 83-995 regarding the constitutionality of Florida's capital sentencing procedure is essentially the same as that addressed in Spaziano. In light of the Court's conclusion that the procedure is constitutionally acceptable, there is no need to GVR in light of Spaziano.

Petitioner's challenge to the trial court's exclusion of persons from a portion of the trial remains. Waller is distinguishable in that it involved exclusion of the press as well as the public and in that it involved a suppression hearing rather than a portion of the trial. The reasoning of the decision, however, that the Sixth Amendment guarantees the right to a public trial and that a public trial "ensure[s] that judge and prosecutor carry out their duties responsibly[,] ... encourages witnesses to come forward and discourages perjury" (slip op., at 7), appears to apply to this situation. Waller insisted that any closure over the objections of the accused must meet the requirements set out in Press-Enterprise. In this case, although the trial court adopted an alternative to total closure, it made no findings regarding the need for closure at all. In light of our recent em-

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 22, 1984

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 83-5596, Spaziano v. Florida

Mr. Stevas informs me that holds for all pending cases will appear on a list for June 28. I therefore am distributing my suggestions for Spaziano holds despite the fact that the primary case is not yet down.

H.A.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 22, 1984

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 83-5596, Spaziano v. Florida

No. 83-6405, Routly v. Florida

Petitioner was convicted of murdering a man who had befriended his girlfriend. The jury recommended life imprisonment, but the trial judge sentenced petitioner to death, finding five aggravating circumstances and no mitigating circumstances. The Florida S.Ct. affirmed.

Petitioner presents several challenges to his conviction and death sentence. He argues that his conviction was based on an involuntary confession. He confessed in order to secure the release of his girlfriend and in exchange for a promise of prosecution for a lesser offense. He also asserts a violation of Gardner v. Florida, 430 U.S. 349 (1977), in that the presentence report consisted of accusations it was impossible for him to rebut. Finally, he presents the claims addressed in Spaziano, that the jury override is unconstitutional and that the Florida standards for determining when override is appropriate were misapplied.

The first two claims have no apparent merit. The state courts found that the confession was voluntary and petitioner has not demonstrated that that finding lacks support in the record. Petitioner was given a copy of the presentence report, so Gardner was satisfied. Petitioner here does not make the same Confrontation Clause claim petitioner in No. 83-6326 makes. He objects to the fact that the report was accusatorial and difficult to rebut. Spaziano disposes of the challenge to the jury override and here, as in the other cases, there is no indication that Florida has applied its standard for allowing a judge to override a jury's recommendation of life in a way that renders the process arbitrary or discriminatory.

I shall vote to deny.

H.A.B.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 22, 1984

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 83-5596, Spaziano v. Florida

No. 83-6326, Sivak v. Idaho

Petitioner and his co-defendant were charged with murder of a gas station attendant. Petitioner was convicted of first degree felony murder and acquitted of first degree murder by premeditation. The trial judge then ordered a presentence report, concluded, despite the jury's verdict, that the murder was an intentional act, and sentenced petitioner to death. The Idaho S.Ct. affirmed, determining that the inconsistency between the jury's verdict and the judge's conclusion was due to the fact that the trial judge had evidence unavailable to the jury. In particular, the judge had the presentence report containing a statement by petitioner's co-defendant, given shortly after his arrest, placing responsibility for the murder on petitioner.

Petitioner challenges his sentence on several grounds. He urges that non-jury capital sentencing is unconstitutional. He insists that the trial judge's refusal to accept the jury's determination that he was not guilty of premeditated murder violated the Double Jeopardy Clause. Finally, he urges that the trial judge's reliance on petitioner's co-defendant's unsworn statement, when petitioner had no opportunity to cross-examine the witness, violated the Confrontation Clause.

Spaziano disposes of petitioner's claim that the Constitution requires jury sentencing in capital cases. There is no merit to petitioner's Double Jeopardy claim. There is no way of telling why the jury decided to acquit petitioner of the premeditated murder charge. There is no necessary inconsistency between the jury's verdict and the trial judge's conclusion that the murder was intentional.

Petitioner's Confrontation Clause claim is troubling. The Court recognized in Gardner v. Florida, 430 U.S. 359 (1976), that a capital defendant must be given access to all of the information in a presentence report so that he can attempt to rebut it. Where, as here, the damaging information was the self-serving statement of a co-defendant, there is little short of a right to cross-examination that will enable the defendant effectively to challenge the information. Petitioner's problem is that he apparently did not raise his Confrontation Clause

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

JUN 19 11:19

June 19, 1984

83-5596 Spaziano v. Florida

Dear Harry:

Please join me.

Sincerely,



Justice Blackmun

lfp/ss

cc: The Conference

✓

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 15, 1984

Re: No. 83-5596 Spaziano v. Florida

Dear Harry:

I, too, have the one reservation about your circulating opinion in this case expressed by Byron in his letter of June 15th; if you could avoid deciding the consequences of the defendant's waiver of the statute of limitations I would be happy to join.

Sincerely,



Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

74 JUN 20 P334

June 20, 1984

Re: No. 83-5596 Spaziano v. Florida

Dear Byron:

Please join me in your concurring opinion.

Sincerely,



Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 14, 1983

Re: 83-5596 - Spaziano v. Florida

Dear Harry:

Your dissent persuades me to vote to grant this petition "plaino." I think you are correct in suggesting that it would make good sense to consider the jury override and the lesser included offense issues in the same case. I assume, therefore, that the case will be granted.

Respectfully,



Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 1, 1984

Re: 83-5596 - Spaziano v. Florida

Dear Bill:

Oink!

Respectfully,



Justice Brennan

cc: Justice Marshall

22 RA 1-781 AS

2112

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

JUN 14 09:41

June 13, 1984

Re: 83-5596 - Spaziano v. Florida

Dear Harry:

Although I agree with your disposition of the lesser included offense argument, I will be dissenting with respect to the trial judge's imposition of the death sentence after the jury had recommended life.

Respectfully,



Justice Blackmun

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 26 P12:43

From: Justice Stevens

Circulated: JUN 26 1984

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-5596

JOSEPH ROBERT SPAZIANO, PETITIONER *v.*
FLORIDA

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF FLORIDA

[June —, 1984]

John

JUSTICE STEVENS, concurring in part and dissenting in part.

In this case, as in 82 others arising under the capital punishment statute enacted by Florida in 1972, the trial judge sentenced the defendant to death after a jury had recommended a sentence of life imprisonment. The question presented is whether the Constitution of the United States permits petitioner's execution when the prosecution has been unable to persuade a jury of his peers that the death penalty is the appropriate punishment for his crime.

The Fourteenth Amendment provides that no State may "deprive any person of life, liberty, or property without due process of law." The concept of due process permits such no such deprivation—whether of life, liberty or property—to occur if it is grossly excessive in the particular case—if it is "cruel and unusual punishment" proscribed by the Eighth Amendment.¹ The differences between the three categories, however, are not mere matters of degree. For al-

¹ See *Solem v. Helm*, 463 U. S. —, — (1983). The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The Eighth Amendment is incorporated in the Due Process Clause of the Fourteenth Amendment. *E. g.*, *Robinson v. California*, 370 U. S. 660, 666 (1967); *Louisiana ex rel. Francis v. Resweber*, 327 U. S. 459, 463 (1947) (plurality opinion).

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

RECEIVED
SUPREME COURT, U.S.
JUSTICE STYLING CHANGES THROUGHOUT.

SEE PAGES: 10, 23

'84 JUN 27 AIO:22

From: Justice Stevens

Circulated: _____

Recirculated: JUN 27 198

*Please see no in your
opinion concerning and dissenting*

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-5596

JOSEPH ROBERT SPAZIANO, PETITIONER *v.*
FLORIDA

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF FLORIDA

[June —, 1984]

JUSTICE STEVENS, concurring in part and dissenting in part.

In this case, as in 82 others arising under the capital punishment statute enacted by Florida in 1972, the trial judge sentenced the defendant to death after a jury had recommended a sentence of life imprisonment. The question presented is whether the Constitution of the United States permits petitioner's execution when the prosecution has been unable to persuade a jury of his peers that the death penalty is the appropriate punishment for his crime.

The Fourteenth Amendment provides that no State may "deprive any person of life, liberty, or property without due process of law." The concept of due process permits no such deprivation—whether of life, liberty or property—to occur if it is grossly excessive in the particular case—if it is "cruel and unusual punishment" proscribed by the Eighth Amendment.¹ The differences between the three categories, however, are not mere matters of degree. For although we look

¹See *Solem v. Helm*, 463 U. S. —, — (1983). The Eighth Amendment provides: "Excessive fines shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The Eighth Amendment is incorporated in the Due Process Clause of the Fourteenth Amendment. *E. g.*, *Robinson v. California*, 370 U. S. 660, 666 (1967); *Louisiana ex rel. Francis v. Resweber*, 327 U. S. 459, 463 (1947) (plurality opinion).

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 29 AT 5:55
STYLISTIC CHANGES THROUGHOUT.
SEE PAGES:

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

Circulated: _____
Recirculated: JUN 29 1984

SUPREME COURT OF THE UNITED STATES

No. 83-5596

JOSEPH ROBERT SPAZIANO, PETITIONER *v.*
FLORIDA

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF FLORIDA

[July 2, 1984]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, concurring in part and dissenting in part.

In this case, as in 82 others arising under the capital punishment statute enacted by Florida in 1972, the trial judge sentenced the defendant to death after a jury had recommended a sentence of life imprisonment. The question presented is whether the Constitution of the United States permits petitioner's execution when the prosecution has been unable to persuade a jury of his peers that the death penalty is the appropriate punishment for his crime.

The Fourteenth Amendment provides that no State may "deprive any person of life, liberty, or property without due process of law." The concept of due process permits no such deprivation—whether of life, liberty or property—to occur if it is grossly excessive in the particular case—if it is "cruel and unusual punishment" proscribed by the Eighth Amendment.¹ The differences between the three categories, how-

¹See *Solem v. Helm*, 463 U. S. —, — (1983). The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The Eighth Amendment is incorporated in the Due Process Clause of the Fourteenth Amendment. *E. g.*, *Robinson v. California*, 370 U. S. 660, 666 (1967); *Louisiana ex rel. Francis v. Resweber*, 327 U. S. 459, 463 (1947) (plurality opinion).

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

JUN 14 1984

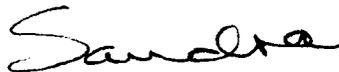
June 13, 1984

Re: No. 83-5596 Spaziano v. Florida

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference