

**Summary of SC90925, *State ex rel. Michael Anthony Taylor v. Troy Steele, Warden***

Original proceeding that originated in Jackson County

Argued and submitted January 5, 2011; opinion issued May 31, 2011

**Attorneys:** Taylor was represented by Robert W. Lundt of the public defender's office in St. Louis, (314) 340-7662; Matthew B. Larsen of the federal public defender's office in Los Angeles, (213) 894-2911; and Robert P. LoBue, Adam Blumenkrantz and Muhammad Faridi of Patterson, Belknap, Webb & Tyler LLP in New York, (212) 336-2000. The state was represented by Stephen D. Hawke of the attorney general's office in Jefferson City, (573) 751-3321. A group of retired judges and prosecutors, who filed a brief as a friend of the Court, was represented by Mark G. Arnold of Husch Blackwell LLP in St. Louis, (314) 480-1500.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A man who pleaded guilty to killing a teenage girl because he wanted to avoid being sentenced by a jury ultimately was sentenced to death by a judge. He now petitions this Court for relief from his sentence. In a decision written by Judge Mary R. Russell and joined by three other judges, the Supreme Court of Missouri denies the man's petition. Because the man pleaded guilty and waived jury sentencing for the strategic reason of avoiding jury sentencing, his federal and state constitutional rights were not violated. His original plea and waiver remained valid after this Court remanded (sent back) his case for resentencing. Because he pleaded guilty and waived jury sentencing, the later-decided cases of *Ring v. Arizona*, *State v. Whitfield* and their progeny do not apply. In addition, the man is not entitled to new proportionality review of the man's death sentence because this Court already has held that it will not undertake retrospective proportionality review of death sentences.

In a dissenting opinion, Judge Laura Denvir Stith would hold that the man was denied what the United States Supreme Court has held is a Sixth Amendment right to a jury determination of the facts necessary to impose the death penalty on him. He benefits from this right because under this Court's precedent, the holdings of these United States Supreme Court cases apply retroactively to his case. Moreover, the man did not waive his Sixth Amendment right to a jury determination of the facts necessary to impose the death penalty because the right was not yet recognized at the time of his plea and the United States Supreme Court has held that one may not waive a constitutional right before it is recognized so long as waiver of that right is not inherent in the fact of pleading guilty. The transcript from the man's post-conviction relief hearing shows that he did not separately waive his right to a jury trial of punishment as a factual matter, and this Court held in a prior appeal that the fact that he statutorily was barred from obtaining a jury trial of punishment once he pleaded guilty did not constitute a waiver. That holding is law of the case.

**Facts:** Michael A. Taylor and a co-conspirator, Roderick Nunley, kidnapped a teenage girl in Jackson County in March 1989, raped her, stabbed her and left her in the trunk of a stolen car, where she died. Taylor pleaded guilty to first-degree murder, armed criminal action, kidnapping and forcible rape. Taylor sought to be sentenced by the trial judge rather than a jury because he believed the judge was less likely to sentence him to death. But the judge sentenced him to death

after finding the statutory factors necessary for that sentence had been established. Taylor sought post-conviction relief, which was denied. On appeal, this Court entered an order vacating Taylor's sentences and remanding the case for a "new penalty hearing, imposition of sentence, and entry of judgment)." On remand, Taylor's case was assigned to a different judge. He filed a motion to withdraw his guilty plea; the motion was overruled. Following a 1994 hearing on sentencing, the new judge sentenced Taylor to death. Taylor again sought post-conviction relief, which again was denied. On appeal, this Court affirmed the sentence, finding that Taylor sufficiently was informed of the consequences of his guilty plea, understood those consequences and voluntarily entered his plea and that the circuit court did not err in refusing to allow him to withdraw his plea after his case was remanded. *State v. Taylor*, 929 S.W.2d 209, 215-218 (Mo. banc 1996) (*Taylor I*). After numerous subsequent unsuccessful requests for relief in his case in both state and federal courts, Taylor again asks this Court for relief from his death sentence.

### **PETITION DENIED.**

**Court en banc holds:** (1) Taylor is not entitled to jury sentencing under the Sixth Amendment. In *Ring v. Arizona*, 536 U.S. 584, 589 (2002), the United States Supreme Court held that the jury must find any facts that are not admitted by a defendant and that are necessary for imposition of the death penalty. In *State v. Whitfield*, 107 S.W.3d 253, 256 (Mo. banc 2003), this Court applied *Ring* retroactively, holding that a defendant is entitled to have a jury make the factual determinations on which his eligibility for the death sentence was predicated. In *Blakely v. Washington*, 545 U.S. 296, 305-06 (2004), the United States Supreme Court extended *Ring* by declaring that the Sixth Amendment right to jury sentencing applies even when a defendant pleads guilty.

Taylor's 1991 decision to plead guilty and be sentenced by a judge rather than a jury, however, precludes his ability now to claim, pursuant to *Blakely*, that the Sixth Amendment entitles him to jury sentencing. *Taylor I* established that Taylor's 1991 guilty plea and jury waiver were not invalidated after this Court remanded his case for a new sentencing hearing. 929 S.W.2d at 215-18. The record in Taylor's case shows that, when he entered his plea in 1991, he understood that a consequence of his plea was that he would not have his guilt or his punishment determined by a jury. Moreover, the record makes clear that he knew the judge would be considering the state's recommendation of the death penalty, that he was entitled to have a jury decide the facts necessary to impose the death sentence, and that by waiving jury sentencing, it would be up to the judge alone to decide his punishment. Taylor's statements at his initial post-conviction hearing in 1992 show that, when he pleaded guilty in 1991, he strategically chose to have the judge sentence him because counsel advised him that was his best hope to avoid the death penalty. Taylor's testimony and other evidence presented at this post-conviction hearing convinces this Court that Taylor intended to plead guilty at all times during the underlying case and had no desire whatsoever for a jury trial on any issue, including sentencing, and that he purposefully and strategically sought to avoid jury sentencing.

(2) Taylor's waiver of jury sentencing remains valid. Contrary to his assertions, nothing in *Taylor I* or any other case has invalidated Taylor's purposeful, strategic choice in 1991 to have his sentence imposed by a judge rather than a jury. *Taylor I* specifically rejected Taylor's arguments that his counsel failed to inform him before he pleaded guilty about the possibility of

jury sentencing pursuant to section 565.006.2, RSMo, and the record leaves no doubt that Taylor's knowledge of this statute had no impact on his plea as his aim was to avoid jury sentencing. Further, Taylor's 1991 waiver of jury sentencing is not invalidated because it preceded case law outlining a Sixth Amendment right to jury sentencing. In determining whether a defendant has the requisite understanding to waive a right knowingly, voluntarily and intelligently, courts do not require the defendant to know if the source of the right being waived is statutory or constitutional. *See, e.g., State v. Hunter*, 840 S.W.2d 850, 858 (Mo. banc 1992). It is clear from the record that Taylor knowingly, voluntarily and intelligently waived his right to be sentenced by a jury. This waiver was not motivated by the source of his right to be sentenced by a jury but rather by his strategic choice to avoid jury sentencing; Taylor did not want to face a jury, no matter under what statutory or constitutional provision a right to jury sentencing existed. The United States Supreme Court's decision in *Halbert v. Michigan*, 545 U.S. 605 (2005), does not render invalid Taylor's 1991 jury waiver or require that he be allowed to evade the consequences of that waiver. Here, the trial court "simply and directly" discussed with Taylor that he was foregoing jury participation in his case, Taylor was not confused about what he was foregoing, and he clearly and unequivocally rejected his opportunity to have his case heard by a jury to obtain his desired sentencing by a judge.

(3) Because the record clearly shows that Taylor strategically waived jury sentencing after weighing the costs and benefits of facing a jury, his case is distinguishable from *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *Ring*, *Blakely*, *Whitfield* and their progeny. Unlike Taylor, the defendants in those cases did not knowingly and strategically plead guilty and waive jury sentencing based on a belief that jury sentencing would offer harsher consequences than judge sentencing. Unlike the defendants in those cases, Taylor strategically sought judge sentencing because he believed a judge was more likely to grant leniency or mercy. Nothing in *Ring* or its progeny extends Sixth Amendment jury sentencing protections to defendants who strategically plead guilty and purposefully waive jury sentencing, and *Blakely* expressly recognizes that defendants can acquiesce to having their sentences imposed by a judge rather than a jury and thereby waive their rights to have a jury find the facts essential for a sentence. *Whitfield* also does not apply, as that case applied *Ring* retroactively to a case in which a defendant chose jury sentencing but nonetheless was sentenced by a judge after the jury deadlocked on punishment. In contrast, Taylor purposefully and strategically rejected jury sentencing.

(4) Taylor is not entitled to retroactive application of *Ring* or its progeny. The United States Supreme Court has held that *Ring* does not apply retroactively to cases in which a defendant has had a full trial and one round of appeals in which the state courts applied the constitution as it was understood at the time and already final on direct review. *Schriro v. Summerlin*, 542 U.S. 348, 358 (2004). Similarly, the 8th Circuit has held that *Blakely* does not apply retroactively to collateral review of a conviction or sentence that is final. *United States v. Stoltz*, 149 F. App'x. 567, 568-69 (8th Cir. 2005). In *Whitfield*, this Court identified the cases to which its holding would apply, and Taylor's was not among them. 107 S.W.3d at 268-69. Accordingly, Taylor is not entitled to retroactive Sixth Amendment jury sentencing under *Whitfield*.

(5) For the reasons discussed above, Taylor remains bound by his strategic decision in 1991 to have his sentence imposed by a judge rather than a jury. He is not entitled to plead guilty and waive jury sentencing as a matter of strategy and then claim that judge sentencing violated his

constitutional rights. As such, his death sentence should not be vacated now. He also is not entitled to have his death sentence reduced to life in prison without the possibility of probation or parole. His sentence does not violate due process or equal protection because, given his strategic choices, he has not been treated differently than other defendants whose sentences imposed by judges were reduced. Further, his sentence is not disproportionate in comparison with life sentences imposed on similarly situated defendants. This Court will not undertake retrospective proportionality review of death sentences. *See State v. Clay*, No. SC78373 (order entered December 9, 2010). As such, Taylor is not entitled to a new proportionality review of his death sentence.

**Dissenting opinion by Judge Stith:** The author would hold that Taylor is entitled to relief. Under *Ring v. Arizona*, 536 U.S. 584 (2002), and *Blakely v. Washington*, 542 U.S. 296 (2004), defendants such as Taylor who plead guilty have a Sixth Amendment right to a jury finding of the facts necessary to impose death. Here, *Ring* should be applied retroactively to Taylor's case because, in all legally relevant respects – given that he was denied a jury trial of the facts underlying punishment in violation of *Ring* – Taylor is in the same position as the defendant in *State v. Whitfield*, 107 S.W.3d 253 (Mo. banc 2003). Therefore, the retroactivity principles set out in *Whitfield* apply equally here. Having chosen to make *Ring* retroactive in *Whitfield*, this Court is bound by equal protection principles to do so uniformly for all similarly situated persons, including Taylor.

*Ring* and *Blakely* do permit a knowing, voluntary and intelligent waiver of the constitutional right to a jury trial of punishment. At Taylor's guilty plea hearing, he did acknowledge his awareness that, by pleading guilty in a death penalty case, the judge became the trier of fact in the punishment phase by operation of Missouri statutes in effect at that time. But this is not determinative of whether Taylor waived his constitutional right to a jury trial as to punishment. Such a waiver must be made separately and must be knowing, voluntary and intelligent under *Ring* and *Blakely*. At the time of Taylor's plea, however, there was no recognized constitutional right to a jury determination of punishment. Under *Halbert v. Michigan*, 504 U.S. 605 (2005), defendants cannot make a knowing, voluntary and intelligent waiver of a constitutional right that was not subsumed in the guilty plea and that was not yet recognized at the time of the plea.

Further, law of the case is an alternative bar to the waiver argument because, in Taylor's earlier appeal, this Court held that Taylor did not waive his right to a jury determination of the facts necessary to punishment because he had no statutory or constitutional right to such a jury trial. This holding that his actions at the guilty plea hearing did not constitute a waiver is law of the case.