SUPREME COURT OF THE UNITED STATES

No. 96–8400

DOUGLAS MCARTHUR BUCHANAN, JR., PETITIONER *v.* RONALD J. ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[January 21, 1998]

JUSTICE SCALIA, concurring.

I agree that there is no "reasonable likelihood that the jurors in petitioner's case understood the challenged instructions to preclude consideration of relevant mitigating evidence," *Boyde* v. *California*, 494 U. S. 370, 386 (1990), so I join the opinion of the Court. I continue to adhere to my view that the Eighth Amendment does not, in any event, require that sentencing juries be given discretion to consider mitigating evidence. Petitioner's argument "that the jury at the selection phase must both have discretion to make an individualized determination and have that discretion limited and channeled," *ante*, at 6, perfectly describes the incompatibility between the *Lockett-Eddings* requirement and the holding of *Furman* v. *Georgia*, 408 U. S. 238 (1972) *(per curiam)*, that the sentencer's discretion must be constrained to avoid arbitrary or freakish imposition of the death penalty. See *Walton* v. *Arizona*, 497 U. S. 639, 656 (1990) (SCALIA, J., concurring in part and concurring in judgment). The Court's ongoing attempt to resolve that contradiction by drawing an arbitrary line in the sand between the "eligibility and selection phases" of the sentencing decision is, in my view, incoherent and ultimately doomed to failure.