

O'CONNOR, J., concurring in judgment

SUPREME COURT OF THE UNITED STATES

No. 99–7000

BOBBY LEE RAMDASS, PETITIONER v. RONALD
J. ANGELONE, DIRECTOR, VIRGINIA DEPART-
MENT OF CORRECTIONS

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

[June 12, 2000]

JUSTICE O'CONNOR, concurring in the judgment.

In *Simmons v. South Carolina*, 512 U. S. 154 (1994), a majority of the Court held that “[w]here the State puts the defendant’s future dangerousness in issue, and the only available alternative sentence to death is life imprisonment without possibility of parole, due process entitles the defendant to inform the capital sentencing jury . . . that he is parole ineligible.” *Id.*, at 178 (O’CONNOR, J., concurring in judgment); see also *id.*, at 163–164 (plurality opinion). Due process requires that “a defendant not be sentenced on the basis of information which he had no opportunity to deny or explain.” *Id.*, at 175 (O’CONNOR, J., concurring in judgment) (quoting *Skipper v. South Carolina*, 476 U. S. 1, 5, n. 1 (1976)). Accordingly, where the State seeks to demonstrate that the defendant poses a future danger to society, he “should be allowed to bring his parole ineligibility to the jury’s attention” as a means of rebutting the State’s case. 512 U. S., at 177. I have no doubt that *Simmons* was rightly decided.

In this case, because petitioner seeks a writ of habeas corpus rather than the vacatur of his sentence on direct appeal, the scope of our review is governed by 28 U. S. C. §2254(d)(1) (1994 ed., Supp. III). Accordingly, we may grant relief only if the Virginia Supreme Court’s decision

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“was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,” *ibid.*; see also *Williams v. Taylor*, 529 U. S. ___, ___ (2000) (slip op., at 4–11), which in this case is our holding in *Simmons*.

The Virginia Supreme Court concluded that *Simmons* was inapplicable because petitioner “was not ineligible for parole when the jury was considering his sentence.” *Ramdass v. Commonwealth*, 248 Va. 518, 521, 450 S. E. 2d 360, 361 (1994). The court noted that, under Virginia law, any person who has been convicted of three separate felony offenses of murder, rape, or robbery “by the presenting of firearms or other deadly weapon” “shall not be eligible for parole.” Va. Code Ann. §53.1–151(B1) (1993). It explained that Ramdass was not parole ineligible at the time of his capital sentencing proceeding because the Kayani murder conviction would not constitute his third conviction for purposes of §53.1–151(B1). Critically, the court held that, although Ramdass had been found guilty of the armed robbery of a Domino’s Pizza restaurant, that verdict did not count as a prior conviction under §53.1–115(B1) because judgment had not yet been entered on that verdict at the time of Ramdass’ capital sentencing proceeding. 248 Va., at 520, 450 S. E. 2d, at 361.

For the reasons explained in the plurality opinion, the Virginia Supreme Court’s decision was neither contrary to, nor an unreasonable application of, our holding in *Simmons*. Whether a defendant is entitled to inform the jury that he is parole ineligible is ultimately a question of federal law, but we look to state law to determine a defendant’s parole status. In *Simmons*, the defendant had “conclusively establish[ed]” that he was parole ineligible at the time of sentencing, and the “prosecution did not challenge or question [his] parole ineligibility.” 512 U. S., at 158. Ramdass, however, was not ineligible for parole when the jury considered his sentence as the relevant court had

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not yet entered the judgment of conviction for the Domino's Pizza robbery. Were the entry of judgment a purely ministerial act under Virginia law, in the sense that it was foreordained, I would agree with petitioner that "the only available alternative sentence to death [was] life imprisonment without possibility of parole." *Id.*, at 178 (O'CONNOR, J., concurring in judgment). Such circumstances would be "materially indistinguishable" from the facts of *Simmons*. See *Williams v. Taylor*, *supra*, at ____ (slip op., at 7). It therefore would have been "contrary to" *Simmons* for the Virginia Supreme Court to hold that petitioner was not entitled to inform the jury that he would be parole ineligible. See *ibid.* Where all that stands between a defendant and parole ineligibility under state law is a purely ministerial act, *Simmons* entitles the defendant to inform the jury of that ineligibility, either by argument or instruction, even if he is not technically "parole ineligible" at the moment of sentencing.

Such was not the case here, however. As the plurality opinion explains, the entry of judgment following a criminal conviction in Virginia state court is not a purely ministerial act, *i.e.*, one that is inevitable and foreordained under state law. The Commonwealth allows criminal defendants to file post-trial motions following a guilty verdict, and trial courts may set aside jury verdicts in response to such motions. See *ante*, at 16–18. Thus, as a matter of Virginia law, a guilty verdict does not inevitably lead to the entry of a judgment order. Consequently, the jury verdict finding petitioner guilty of the Domino's Pizza robbery did not mean that petitioner would necessarily be parole ineligible under state law. Indeed, petitioner himself concedes that there was a "possibility that the Domino's Pizza trial judge could set aside the verdict under Virginia Supreme Court Rule 3A:15(b)." Brief for Petitioner 37.

Petitioner nevertheless contends that the possibility

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that the trial court would set aside the guilty verdict for the Domino's Pizza robbery was quite remote, and therefore that the entry of judgment was extremely likely. But, as the plurality opinion explains, *Simmons* does not require courts to estimate the likelihood of future contingencies concerning the defendant's parole ineligibility. Rather, *Simmons* entitles the defendant to inform the capital sentencing jury that he is parole ineligible where the only alternative sentence to death is life without the possibility of parole. And unlike the defendant in *Simmons*, Ramdass was eligible for parole under state law at the time of his sentencing.

For these reasons, I agree that petitioner is not entitled to the issuance of a writ of habeas corpus. As our decision in *Williams v. Taylor* makes clear, the standard of review dictated by 28 U. S. C. §2254(d)(1) (1994 ed., Supp. III) is narrower than that applicable on direct review. Applying that standard here, I believe the Virginia Supreme Court's decision was neither contrary to, nor an unreasonable application of, our holding in *Simmons*. Accordingly, I concur in the judgment.