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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

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OHIO ADULT PAROLE AUTHORITY ET AL. *v.* WOODARD

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 96–1769. Argued December 10, 1997— Decided March 25, 1998

After respondent Woodard's Ohio murder conviction and death sentence were affirmed on direct appeal and this Court denied certiorari, petitioner Ohio Adult Parole Authority commenced its clemency investigation in accordance with state law, informing respondent that he could have his voluntary interview with Authority members on a particular date, and that his clemency hearing would be held a week later. Respondent filed this suit under 42 U. S. C. §1983, alleging that Ohio's clemency process violated his Fourteenth Amendment due process right and his Fifth Amendment right to remain silent. The District Court granted judgment on the pleadings to the State, and the Sixth Circuit affirmed in part and reversed in part. Noting that *Connecticut Bd. of Pardons* v. *Dumschat*, 452 U. S. 458, 464–465, had decisively rejected the argument that federal law can create a liberty interest in clemency, the latter court held that respondent had failed to establish a life or liberty interest protected by due process. The court also held, however, that respondent's "original" pretrial life and liberty interests were protected by a "second strand" of due process analysis under *Evitts* v. *Lucey*, 469 U. S. 387, 393, although the amount of process due could be minimal because clemency, while an "integral part" of the adjudicatory system, is far removed from trial. The court remanded for the District Court to decide what that process should be. Finally, the Sixth Circuit concluded that Ohio's voluntary interview procedure presented respondent with a "Hobson's choice" between asserting his Fifth Amendment privilege against self-incrimination and participating in Ohio's clemency review process, thereby raising the specter of an unconstitutional condition.

Held: The judgment is reversed.

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107 F.3d 1178, reversed.

THE CHIEF JUSTICE delivered the opinion of the Court with respect to Part III, concluding that giving an inmate the option of voluntarily participating in an interview as part of the clemency process does not violate his Fifth Amendment rights. That Amendment protects against compelled self-incrimination. See *Baxter* v. *Palmigiano*, 425 U. S. 308, 316–318. Even on assumptions most favorable to respondent's claim– *i.e.*, that nothing in the clemency procedure grants applicants immunity for what they might say or makes the interview in any way confidential, and that the Authority will draw adverse inferences from respondent's refusal to answer questions– his testimony at a voluntary interview would not be "compelled." He merely faces a choice quite similar to those made by a criminal defendant in the course of criminal proceedings. For example, a defendant who chooses to testify in his own defense abandons the privilege against self-incrimination when the prosecution seeks to cross–examine him, and may be impeached by proof of prior convictions. In these situations, the undoubted pressures to testify that are generated by the strength of the Government's case do not constitute "compulsion" for Fifth Amendment purposes. See *Williams* v. *Florida*, 399 U. S. 78, 84–85. Similarly, respondent here has the choice of providing information to the Authority– at the risk of damaging his case for clemency or for postconviction relief– or of remaining silent, but the pressure to speak does not make the interview compelled. Pp. 11–14.

THE CHIEF JUSTICE, joined by JUSTICE SCALIA, JUSTICE KENNEDY, and JUSTICE THOMAS, concluded in Part II that an inmate does not establish a violation of the Due Process Clause in clemency proceedings, under either *Dumschat* or *Evitts*, where, as here, the procedures in question do no more than confirm that such decisions are committed, as is the Nation's tradition, to the executive's authority. This Court reaffirms its holding in *Dumschat*, *supra*, at 464, that pardon and commutation decisions are rarely, if ever, appropriate subjects for judicial review. Respondent's argument that there is a continuing life interest in clemency that is broader in scope than the "original" life interest adjudicated at trial and sentencing is barred by *Dumschat*. The process respondent seeks would be inconsistent with the heart of executive clemency, which is to grant clemency as a matter of grace, thus allowing the executive to consider a wide range of factors not comprehended by earlier judicial proceedings and sentencing determinations. Although respondent maintains a residual life interest, *e.g.*, in not being summarily executed by prison guards, he cannot use that interest to challenge the clemency determination by requiring the procedural protections he seeks. *Greenholtz* v. *Inmates of Neb. Penal and Correctional Complex*, 442 U. S. 1, 7. Also rejected is re-

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spondent's claim that clemency is entitled to due process protection under *Evitts*. Expressly relying on the combination of two lines of cases to justify the conclusion that a criminal defendant has a right to effective assistance of counsel on a first appeal as of right, 469 U. S., at 394–396, the *Evitts* Court did not purport to create a new "strand" of due process analysis, and it did not rely on the notion of a continuum of due process rights, as respondent claims. There is no such continuum. See, *e.g.*, *Murray* v. *Giarratano*, 492 U. S. 1, 9–10. An examination of the function and significance of the discretionary clemency decision at issue here readily shows that it is far different from a first appeal as of right, and thus is not "an integral part of the . . . system for finally adjudicating . . . guilt or innocence," as *Evitts*, *supra*, at 393, requires. Pp. 5–11.

JUSTICE O'CONNOR, joined by JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER, concluded that, because a prisoner under a death sentence has a continuing interest in his life, the question raised is what process is constitutionally necessary to protect that interest. Although due process demands are reduced once society has validly convicted an individual of a crime and therefore established its right to punish, *Ford* v. *Wainwright*, 477 U. S. 399, 429 (O'CONNOR, J., concurring in result in part and dissenting in part), the Court of Appeals correctly concluded that some *minimal* procedural safeguards apply to clemency proceedings. Judicial intervention might, for example, be warranted in the face of a scheme whereby a state official flipped a coin to determine whether to grant clemency, or in a case where the State arbitrarily denied a prisoner any access to its clemency process. However, a remand to permit the District Court to address respondent's specific allegations of due process violations is not required. The process he received comports with Ohio's regulations and observes whatever limitations the Due Process Clause may impose on clemency proceedings. Pp. 2–3.

REHNQUIST, C. J., announced the judgment of the Court and delivered the opinion for a unanimous Court with respect to Part III, the opinion of the Court with respect to Part I, in which O'CONNOR, SCALIA, KENNEDY, SOUTER, THOMAS, GINSBURG, and BREYER, JJ., joined, and an opinion with respect to Part II, in which SCALIA, KENNEDY, and THOMAS, JJ., joined. O'CONNOR, J., filed an opinion concurring in part and concurring in the judgment, in which SOUTER, GINSBURG, and BREYER, JJ., joined. STEVENS, J., filed an opinion concurring in part and dissenting in part.