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SUPREME COURT OF THE UNITED STATES

No. 97–6146

ANGEL JAIME MONGE, PETITIONER v. CALIFORNIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
CALIFORNIA

[June 26, 1998]

JUSTICE O'CONNOR delivered the opinion of the Court.

This case presents the question whether the Double Jeopardy Clause, which we have found applicable in the capital sentencing context, see *Bullington v. Missouri*, 451 U. S. 430 (1981), extends to noncapital sentencing proceedings. We hold that it does not, and accordingly affirm the judgment of the California Supreme Court.

I

Petitioner was charged under California law with one count of using a minor to sell marijuana, Cal. Health & Safety Code Ann. §11361(a) (West 1991), one count of sale or transportation of marijuana, §11360(a), and one count of possession of marijuana for sale, §11359. In the information, the State also notified petitioner that it would seek to prove two sentence enhancement allegations: that petitioner had previously been convicted of assault and that he had served a prison term for that offense, see Cal. Penal Code Ann. §§245(a)(1), 667(e)(1), and 667.5 (West Supp. 1998).

Under California's "three-strikes" law, a defendant convicted of a felony who has two qualifying prior convictions

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for “serious felonies” receives a minimum sentence of 25 years to life; when the instant conviction was preceded by one serious felony offense, the court doubles a defendant’s term of imprisonment. §§667(d)(1) and (e)(1)–(2). An assault conviction qualifies as a serious felony if the defendant either inflicted great bodily injury on another person or personally used a dangerous or deadly weapon during the assault. §§1192.7(c)(8) and (23). According to California law, a number of procedural safeguards surround the assessment of prior conviction allegations: Defendants may invoke the right to a jury trial, the right to confront witnesses, and the privilege against self-incrimination; the prosecution must prove the allegations beyond a reasonable doubt; and the rules of evidence apply. See, *e.g.*, 16 Cal. 4th 826, 833–834, 941 P. 2d 1121, 1126 (1997).

Here, petitioner waived his right to a jury trial on the sentencing issues, and the court granted his motion to bifurcate the proceedings. After a jury entered a guilty verdict on the substantive offenses, the truth of the prior conviction allegations was argued before the court. The prosecutor asserted that petitioner had personally used a stick in committing the assault, see Tr. 189–190 (June 12, 1995), App. 12, but introduced into evidence only a prison record demonstrating that petitioner had been convicted of assault with a deadly weapon and had served a prison term for the offense, see People’s Exh. 1 (filed June 12, 1995), App. 3–6. The trial court found both sentencing allegations true and imposed an 11-year term of imprisonment: 5 years on count one, doubled to 10 under the three-strikes law, and a 1-year enhancement for the prior prison term. The court also stayed a 3-year sentence on count two and ordered the 2-year sentence on count three to be served concurrently.

Petitioner appealed, and the California Court of Appeal, on its own motion, requested briefing as to whether sufficient evidence supported the finding that petitioner had a

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qualifying prior conviction. The State conceded that the record of the sentencing proceedings did not contain proof beyond a reasonable doubt that petitioner had personally inflicted great bodily injury or used a deadly weapon, but requested another opportunity to prove the allegations on remand. See Respondent's Supplemental Brief (Cal. App.), pp. 2–3, App. 33–35. The court, however, determined both that the evidence was insufficient to trigger the sentence enhancement and that a remand for retrial on the allegation would violate double jeopardy principles.

The California Supreme Court reversed the Court of Appeal's ruling that the Double Jeopardy Clause bars retrial of prior conviction allegations. The three-justice plurality noted this Court's traditional reluctance to apply double jeopardy principles to sentencing proceedings and concluded that the exception recognized in *Bullington*, *supra*, did not apply. In *Bullington*, we held that a capital defendant who had received a life sentence during a penalty phase that bore "the hallmarks of [a] trial on guilt or innocence" could not be resentenced to death upon retrial following appeal. Here, the plurality acknowledged that California's proceedings to assess the truth of prior conviction allegations have the hallmarks of a trial, but it found *Bullington* distinguishable on several grounds. First, the plurality cited statements by this Court indicating that *Bullington*'s rationale is confined to the unique circumstances of capital cases. See 16 Cal. 4th, at 836–837, 941 P. 2d, at 1128 (citing *Caspari v. Bohlen*, 510 U. S. 383, 392 (1994); *Pennsylvania v. Goldhammer*, 474 U. S. 28, 30 (1985) (*per curiam*)). The plurality also reasoned that capital sentencing procedures are mandated by the Supreme Court's interpretation of the Federal Constitution, whereas the procedural protections accorded in California's sentence enhancement proceedings rest on statutory grounds. 16 Cal. 4th, at 837, 941 P. 2d, at 1128. The plurality then cited the breadth and subjectivity of the factual

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determinations at issue in the capital sentencing context, as well as the financial and emotional burden that the penalty phase of a capital case places on a defendant. *Id.*, at 838–839, 941 P. 2d, at 1129. Finally, the plurality explained that a qualifying strike involves a finding of a particular “status” that may be made from the record of the prior conviction, while the jury’s sentencing determination in a capital case “depends on the specific facts of the defendant’s present crime, as well as an overall assessment of the defendant’s character.” *Id.*, at 839, 941 P. 2d, at 1130.

The concurring justice who provided the fourth vote to reverse noted that retrial on a prior conviction allegation would not require the factfinder to reevaluate the evidence underlying the substantive offense. Accordingly, he concluded that a second attempt at proving the allegation would not unfairly subject a defendant to the risk of repeated prosecution within the meaning of the Double Jeopardy Clause. *Id.*, at 846–847, 941 P. 2d, at 1134–1135 (Brown, J., concurring). Three justices dissented, asserting that under *Bullington*’s rationale, the Double Jeopardy Clause precludes successive efforts to prove prior conviction allegations. *Id.*, at 847, 941 P. 2d, at 1135 (Werdegar, J., dissenting).

The California Supreme Court’s decision deepened a conflict among the state courts as to *Bullington*’s application to noncapital sentencing. Compare, *e.g.*, *State v. Hennings*, 100 Wash. 2d 379, 670 P. 2d 256 (1983), with *People v. Levin*, 157 Ill. 2d 138, 623 N. E. 2d 317 (1993). Prior to this Court’s determination that the nonretroactivity rule of *Teague v. Lane*, 489 U. S. 288 (1989), would bar the extension of *Bullington* to noncapital sentencing proceedings on federal habeas review, see *Caspari*, *supra*, the Federal Courts of Appeals had reached disparate conclusions as well. Compare, *e.g.*, *Briggs v. Procunier*, 764 F. 2d 368, 371 (CA5 1985), with *Carpenter v. Chapleau*, 72

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F. 3d 1269, 1274 (CA6), cert. denied, 519 U. S. 835 (1996). In view of the conflicting authority on the issue, we granted certiorari, 522 U. S. ____ (1998).

II

The Double Jeopardy Clause of the Fifth Amendment, applicable to the States through the Fourteenth Amendment, provides: “[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb.” U. S. Const., Amdt. 5. We have previously held that it protects against successive prosecutions for the same offense after acquittal or conviction and against multiple criminal punishments for the same offense. See *North Carolina v. Pearce*, 395 U. S. 711, 717 (1969). Historically, we have found double jeopardy protections inapplicable to sentencing proceedings, see *Bullington*, *supra*, at 438, because the determinations at issue do not place a defendant in jeopardy for an “offense,” see, e.g., *Nichols v. United States*, 511 U. S. 738, 747 (1994) (noting that repeat-offender laws “penaliz[e] only the last offense committed by the defendant”). Nor have sentence enhancements been construed as additional punishment for the previous offense; rather, they act to increase a sentence “because of the manner in which [the defendant] committed the crime of conviction.” *United States v. Watts*, 519 U. S. 148, 154 (1997); see also *Witte v. United States*, 515 U. S. 389, 398–399 (1995). An enhanced sentence imposed on a persistent offender thus “is not to be viewed as either a new jeopardy or additional penalty for the earlier crimes” but as “a stiffened penalty for the latest crime, which is considered to be an aggravated offense because a repetitive one.” *Gryger v. Burke*, 334 U. S. 728, 732 (1948); cf. *Moore v. Missouri*, 159 U. S. 673, 678 (1895) (“[T]he State may undoubtedly provide that persons who have been before convicted of crime may suffer severer punishment for subsequent offences than for a first

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offence”).

JUSTICE SCALIA insists that the recidivism enhancement the Court confronts here in fact constitutes an element of petitioner’s offense. His dissent addresses an issue that was neither considered by the state courts nor discussed in petitioner’s brief before this Court. In any event, JUSTICE SCALIA acknowledges, *post*, at 5, that his argument is squarely foreclosed by our decision in *Almendarez-Torres v. United States*, 523 U. S. — (1998). One could imagine circumstances in which fundamental fairness would require that a particular fact be treated as an element of the offense, see *post*, at 2 (SCALIA, J., dissenting), but there are also cases in which fairness calls for defining a fact as a sentencing factor. A defendant might not, for example, wish to simultaneously profess his innocence of a drug offense and dispute the amount of drugs allegedly involved. Cf. *Gregg v. Georgia*, 428 U. S. 153, 190–195 (1976) (joint opinion of Stewart, Powell, and STEVENS, JJ.) (discussing the benefits of bifurcated proceedings in capital cases). In part for that reason, the Court has rejected an absolute rule that an enhancement constitutes an element of the offense any time that it increases the maximum sentence to which a defendant is exposed. See *Almendarez-Torres*, *supra*. Under California law, the maximum sentence applicable to a first offender who uses a minor to sell drugs is seven years, and a judge may double that sentence to 14 years where the offender has previously been convicted of a qualifying felony. See Cal. Health & Safety Code Ann. §11361(a) (West 1991). That increase falls well within the range that the Court has found to be constitutionally permissible. See *Almendarez-Torres*, *supra* (upholding a potential 18-year increase to a 2-year sentence). Thus, the sentencing determination here did not place petitioner in jeopardy for an “offense.”

Sentencing decisions favorable to the defendant, moreover, cannot generally be analogized to an acquittal. We

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have held that where an appeals court overturns a conviction on the ground that the prosecution proffered insufficient evidence of guilt, that finding is comparable to an acquittal, and the Double Jeopardy Clause precludes a second trial. See *Burks v. United States*, 437 U. S. 1, 16 (1978). Where a similar failure of proof occurs in a sentencing proceeding, however, the analogy is inapt. The pronouncement of sentence simply does not “have the qualities of constitutional finality that attend an acquittal.” *United States v. DiFrancesco*, 449 U. S. 117, 134 (1980); see also *Bullington*, 451 U. S., at 438 (“The imposition of a particular sentence usually is not regarded as an ‘acquittal’ of any more severe sentence that could have been imposed”).

The Double Jeopardy Clause “does not provide the defendant with the right to know at any specific moment in time what the exact limit of his punishment will turn out to be.” *DiFrancesco*, 449 U. S., at 137. Consequently, it is a “well-established part of our constitutional jurisprudence” that the guarantee against double jeopardy neither prevents the prosecution from seeking review of a sentence nor restricts the length of a sentence imposed upon retrial after a defendant’s successful appeal. See *id.*, at 135; *Pearce, supra*, at 720; see also *Stroud v. United States*, 251 U. S. 15, 18 (1919) (despite a harsher sentence on retrial, the defendant was not “placed in second jeopardy within the meaning of the Constitution”).

Our opinion in *Bullington* established a “narrow exception” to the general rule that double jeopardy principles have no application in the sentencing context. See *Schiro v. Farley*, 510 U. S. 222, 231 (1994). In *Bullington*, a capital defendant had received a sentence of life imprisonment from the original sentencing jury. The defendant subsequently obtained a new trial on the ground that the court had permitted prospective women jurors to claim automatic exemption from jury service in violation of the Sixth

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and Fourteenth Amendments. 451 U. S., at 436. When the State announced its intention to seek the death penalty again, the defendant alleged a double jeopardy violation. We determined that the first jury’s deliberations bore the “hallmarks of the trial on guilt or innocence,” *id.*, at 439, because the jury was presented with a choice between two alternatives together with standards to guide their decision, the prosecution undertook the burden of establishing facts beyond a reasonable doubt, and the evidence was introduced in a separate proceeding that formally resembled a trial, *id.*, at 438. In light of the jury’s binary determination and the heightened procedural protections, we found the proceeding distinct from traditional sentencing, in which “it is impossible to conclude that a sentence less than the statutory maximum constitute[s] a decision to the effect that the government has failed to prove its case.” *Id.*, at 443 (quoting *Burks, supra*, at 15).

Moreover, we reasoned that the “embarrassment, expense and ordeal” as well as the “anxiety and insecurity” that a capital defendant faces “are at least equivalent to that faced by any defendant at the guilt phase of a criminal trial.” 451 U. S., at 445. And we cited the “unacceptably high risk” that repeated attempts to persuade a jury to impose the death penalty would lead to an erroneous capital sentence. *Id.*, at 445–446. We later extended the rule set forth in *Bullington* to a capital sentencing scheme in which the judge, as opposed to a jury, had initially determined that a life sentence was appropriate. See *Arizona v. Rumsey*, 467 U. S. 203, 209–210 (1984).

Petitioner contends that the rationale for imposing a double jeopardy bar in *Bullington* and *Rumsey* applies with equal force to California’s proceedings to determine the truth of a prior conviction allegation. Like the Missouri capital sentencing scheme at issue in *Bullington*, petitioner argues, the sentencing proceedings here have the “hallmarks of a trial on guilt or innocence” because the

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sentencer makes an objective finding as to whether the prosecution has proved a historical fact beyond a reasonable doubt. The determination whether a defendant in fact has qualifying prior convictions may be distinguished, petitioner maintains, from the normative decisions typical of traditional sentencing. In petitioner's view, once a defendant has obtained a favorable finding on such an issue, the State should not be permitted to retry the allegation.

Even assuming, however, that the proceeding on the prior conviction allegation has the "hallmarks" of a trial that we identified in *Bullington*, a critical component of our reasoning in that case was the capital sentencing context. The penalty phase of a capital trial is undertaken to assess the gravity of a particular offense and to determine whether it warrants the ultimate punishment; it is in many respects a continuation of the trial on guilt or innocence of capital murder. "It is of vital importance" that the decisions made in that context "be, and appear to be, based on reason rather than caprice or emotion." *Gardner v. Florida*, 430 U. S. 349, 358 (1977). Because the death penalty is unique "in both its severity and its finality," *id.*, at 357, we have recognized an acute need for reliability in capital sentencing proceedings. See *Lockett v. Ohio*, 438 U. S. 586, 604 (1978) (opinion of Burger, C. J.) (stating that the "qualitative difference between death and other penalties calls for a greater degree of reliability when the death sentence is imposed"); see also *Strickland v. Washington*, 466 U. S. 668, 704 (1984) (Brennan, J., concurring in part and dissenting in part) ("[W]e have consistently required that capital proceedings be policed at all stages by an especially vigilant concern for procedural fairness and for the accuracy of factfinding").

That need for reliability accords with one of the central concerns animating the constitutional prohibition against double jeopardy. As the Court explained in *Green v. United States*, 355 U. S. 184 (1957), the Double Jeopardy

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Clause prevents States from “mak[ing] repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.” *Id.*, at 187–188. Indeed, we cited the heightened interest in accuracy in the *Bullington* decision itself. We noted that in a capital sentencing proceeding, as in a criminal trial, “the interests of the defendant [are] of such magnitude that . . . they have been protected by standards of proof designed to exclude as nearly as possible the likelihood of an erroneous judgment.” 451 U. S., at 441 (quoting *Addington v. Texas*, 441 U. S. 418, 423–424 (1979)).

Moreover, we have suggested in earlier cases that *Bullington*’s rationale is confined to the “unique circumstances of a capital sentencing proceeding.” *Caspari*, 510 U. S., at 392; see also *Goldhammer*, 474 U. S., at 30 (“[T]he decisions of this Court clearly establish that a sentenc[ing] in a noncapital case] does not have the qualities of constitutional finality that attend an acquittal”) (quoting *DiFrancesco*, 449 U. S., at 134). In addition, we have cited *Bullington* as an example of the heightened procedural protections accorded capital defendants. See *Strickland*, *supra*, at 686–687 (“A capital proceeding . . . is sufficiently like a trial in its adversarial format and in the existence of standards for decision, see [*Bullington*], that counsel’s role in the proceeding is comparable to counsel’s role at trial”).

In an attempt to minimize the relevance of the death penalty context, petitioner argues that the application of double jeopardy principles turns on the nature rather than the consequences of the proceeding. For example, petitioner notes that *Bullington* did not overrule the Court’s decision in *Stroud v. United States*, 251 U. S. 15 (1919) — which found the double jeopardy bar inapplicable to a

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particular capital sentencing proceeding— but rather distinguished it on the ground that the proceeding at issue did not bear the hallmarks of a trial on guilt or innocence. *Stroud* predates our decisions in *Furman v. Georgia*, 408 U. S. 238 (1972) (*per curiam*), and *Gregg v. Georgia*, 428 U. S. 153 (1976) (joint opinion of Stewart, Powell, and STEVENS, JJ.); it was decided at a time when “no significant constitutional difference between the death penalty and lesser punishments for crime had been expressly recognized by this Court.” See *Gardner, supra*, at 357 (opinion of STEVENS, J.). Consequently, the capital sentencing procedures at issue in *Stroud* did not resemble a trial, and the Court confronted a different question in that case. The holding of *Bullington* turns on *both* the trial-like proceedings at issue and the severity of the penalty at stake. That the Court focused on the absence of procedural safeguards in distinguishing an earlier capital case does not mean that the *Bullington* decision rests on a purely procedural rationale.

In our death penalty jurisprudence, moreover, the nature and the consequences of capital sentencing proceedings are intertwined. We have held that “in capital cases the fundamental respect for humanity underlying the Eighth Amendment requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death.” *Woodson v. North Carolina*, 428 U. S. 280, 304 (1976) (joint opinion of Stewart, Powell, and STEVENS, JJ.) (internal citation omitted). Where noncapital sentencing proceedings contain trial-like protections, that is a matter of legislative grace, not constitutional command. Many States have chosen to implement procedural safeguards to protect defendants who may face dramatic increases in their sentences as a result of recidivism enhancements. We do not believe that because the States have done so,

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we are compelled to extend the double jeopardy bar. Indeed, were we to apply double jeopardy here, we might create disincentives that would diminish these important procedural protections.

* * *

We conclude that *Bullington*'s rationale is confined to the unique circumstances of capital sentencing and that the Double Jeopardy Clause does not preclude retrial on a prior conviction allegation in the noncapital sentencing context. Accordingly, the judgment of the California Supreme Court is affirmed.

It is so ordered.