

SCALIA, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 03–1039

JILL L. BROWN, WARDEN, PETITIONER *v.*
WILLIAM CHARLES PAYTON

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

[March 22, 2005]

JUSTICE SCALIA, with whom JUSTICE THOMAS joins,
concurring.

I join the Court’s opinion, which correctly holds that the California Supreme Court’s decision was not “contrary to” or “an unreasonable application of” our cases. 28 U. S. C. §2254(d)(1). Even if our review were not circumscribed by statute, I would adhere to my view that limiting a jury’s discretion to consider all mitigating evidence does not violate the Eighth Amendment. See *Walton v. Arizona*, 497 U. S. 639, 673 (1990) (SCALIA, J., concurring in part and concurring in judgment).