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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

Syllabus

BROWN, WARDEN *v.* PAYTON

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

No. 03–1039. Argued November 10, 2004—Decided March 22, 2005

In the penalty phase of respondent Payton's trial following his conviction on capital murder and related charges, his counsel presented witnesses who testified that, during the one year and nine months Payton had been incarcerated since his arrest, he had made a sincere commitment to God, participated in prison Bible study and a prison ministry, and had a calming effect on other prisoners. The trial judge gave jury instructions that followed verbatim the text of a California statute, setting forth 11 different factors, labeled (a) through (k), to guide the jury in determining whether to impose a death sentence or life imprisonment. The last such instruction, the so-called factor (k) instruction, directed jurors to consider "[a]ny other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime." In his closing, the prosecutor offered jurors his incorrect opinion that factor (k) did not allow them to consider anything that happened after the crime. Although he also told them several times that, in his view, they had not heard any evidence of mitigation, he discussed Payton's evidence in considerable detail and argued that the circumstances and facts of the case, coupled with Payton's prior violent acts, outweighed the mitigating effect of Payton's religious conversion. When the defense objected to the argument, the court admonished the jury that the prosecutor's comments were merely argument, but it did not explicitly instruct that the prosecutor's interpretation was incorrect. Finding the special circumstance of murder in the course of rape, the jury recommended that Payton be sentenced to death, and the judge complied. The California Supreme Court affirmed. Applying *Boyde* v. *California*, 494 U. S. 370, which had considered the constitutionality of the identical factor (k) instruction, the state court held that, considering the con-

text of the proceedings, there was no reasonable likelihood that the jury believed it was required to disregard Payton's mitigating evidence. The Federal District Court disagreed and granted Payton habeas relief, ruling also that the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) did not apply. The en banc Ninth Circuit affirmed and, like the District Court, held that AEDPA did not apply. On remand from this Court in light of *Woodford* v. *Garceau,* 538 U. S. 202, the Ninth Circuit purported to decide the case under the deferential standard AEDPA mandates. It again affirmed, concluding that the California Supreme Court had unreasonably applied *Boyde* in holding the factor (k) instruction was not unconstitutionally ambiguous in Payton's case. The error, the court determined, was that the factor (k) instruction did not make it clear to the jury that it could consider the evidence concerning Payton's postcrime religious conversion and the prosecutor was allowed to urge this erroneous interpretation.

Held: The Ninth Circuit's decision was contrary to the limits on federal habeas review imposed by AEDPA. Pp. 7–13.

(a) AEDPA provides that, when a habeas petitioner's claim has been adjudicated on the merits in state court, a federal court may not grant relief unless the state court's adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U. S. C. §2254(d)(1). A state-court decision is contrary to this Court's clearly established precedents if it applies a rule that contradicts the governing law set forth in this Court's cases, or if it confronts a set of facts that is materially indistinguishable from a decision of this Court but reaches a different result. *E.g., Williams* v. *Taylor*, 529 U. S. 362, 405. A state-court decision involves an unreasonable application of this Court's clearly established precedents if the state court applies such precedents to the facts in an objectively unreasonable manner. *E.g., ibid.* These conditions have not been established. P. 7.

(b) In light of *Boyde*, the California Supreme Court cannot be said to have acted unreasonably in declining to distinguish between precrime and postcrime mitigating evidence. The California Supreme Court read *Boyde* as establishing that factor (k)'s text was broad enough to accommodate Payton's postcrime mitigating evidence, but the Ninth Circuit held that *Boyde*'s reasoning did not control in this case because *Boyde* concerned precrime, not postcrime, mitigation evidence. However, *Boyde* held that factor (k) directed consideration of any circumstance that might excuse the crime, see 494 U. S., at 382, and it is not unreasonable to believe that a postcrime character transformation could do so. Pp. 7–8.

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(c) Even were the Court to assume that the California Supreme Court was incorrect in concluding that the prosecutor's argument and remarks did not mislead the jury into believing it could not consider Payton's mitigation evidence, the state court's conclusion was not unreasonable, and is therefore just the type of decision that AEDPA shields on habeas review. The state court's conclusion was an application of *Boyde* to similar but not identical facts. Considering the whole context of the proceedings, it was not unreasonable for the state court to determine that the jury most likely believed that the mitigation evidence, while within the factor (k) instruction's reach, was simply too insubstantial to overcome the arguments for imposing the death penalty; nor was it unreasonable for the state court to rely upon *Boyde* to support its analysis. Pp. 9–13.

346 F. 3d 1204, reversed.

KENNEDY, J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, THOMAS, and BREYER, JJ., joined. SCALIA, J., filed a concurring opinion, in which THOMAS, J., joined. BREYER, J., filed a concurring opinion. SOUTER, J., filed a dissenting opinion, in which STEVENS and GINSBURG, JJ., joined. REHNQUIST, C. J., took no part in the decision of the case.