SUPREME COURT OF THE UNITED STATES

No. 00–5250

WESLEY AARON SHAFER, JR., PETITIONER
v. SOUTH CAROLINA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

[March 20, 2001]

JUSTICE THOMAS, dissenting.

For better or, as I believe, worse, the majority's decision in this case is the logical next step after *Simmons* v. *South Carolina*, 512 U. S. 154 (1994). Now, whenever future dangerousness is placed at issue and the jury's potential sentencing choice is between life without parole and death, the trial court must instruct the jury on the impossibility of release even if there is an alternative sentence available to the court under which the defendant could be released. However, even accepting that sentencing courts in South Carolina must now permit the jury to learn about the impossibility of parole when life imprisonment is a sentencing possibility, I believe that the court's instructions and the arguments made by counsel in Shafer's case were sufficient to inform the jury of what "life imprisonment" meant for Shafer. I therefore respectfully dissent.

In *Simmons*, a majority of this Court was concerned that the jury in Simmons' trial reasonably could have believed that, if he were sentenced to life, he would be eligible for parole. See *id.,* at 161 (plurality opinion); *id.*, at 177–178 (O'CONNOR, J., concurring in judgment). Therefore, Simmons' defense to future dangerousness– that because he sexually assaulted only elderly women, he would pose no danger to fellow inmates, see *id.*, at 157 (plurality opinion)– would not have been effective. To

correct the jury's possible misunderstanding of the availability of parole, Simmons requested several jury instructions, including one that would explain that, if he were sentenced to life imprisonment, "'he actually w[ould] be sentenced to imprisonment in the state penitentiary for the balance of his natural life.'" *Id.*, at 160. The trial court rejected this instruction and instead ambiguously informed the jury that the term life imprisonment is to be understood according to its "'plain and ordinary meaning,'" which did "'nothing to dispel the misunderstanding reasonable jurors may have about the way in which any particular State defines 'life imprisonment.'" *Id.*, at 169–170.

In this case, by contrast, the judge repeatedly explained that "'life imprisonment means until the death of the defendant.'" App. 201. The judge defined "'life imprisonment'" as "'incarceration of the defendant until his death,'" *id.*, at 209, and informed the jury that, if it chose the punishment of life imprisonment, the verdict form would read "'We, the jury . . . unanimously recommend that the defendant, Wesley Aaron Shafer, be imprisoned in the state penitentiary for the balance of his natural life.'" *Id.*, at 213–214. Emphasizing this very point, Shafer's counsel argued to the jury that Shafer would never leave prison if he received a life sentence. See *id.*, at 192 ("'The question is will the State execute him or will he just die in prison'"); *id.*, at 194 ("'putting a 19 year old in prison until he is dead'" and "'you can put him some place until he is dead'"); *id.*, at 198 ("'When they say give [him] life, he's not going home. . . . I'm just asking for the smallest amount of mercy it takes to make a man, a child spend the rest of his life in prison'").

Given these explanations of what life imprisonment means, which left no room for speculation by the jury, I can only infer that the jury's questions regarding parole referred not to Shafer's parole eligibility in the event the

jury sentenced Shafer to life, but rather to his parole eligibility in the event it did not sentence him at all. In fact, both of the jury's questions referred only to parole eligibility of someone "'convicted of murder,'" *id.*, at 239–240 ("[I]s there any remote chance that someone convicted of murder could become eligible for parole.'"); *id.*, at 240 ("[U]nder what conditions would someone convicted for murder be eligible [for parole]'"), rather than parole eligibility of someone *sentenced to life imprisonment*. Under South Carolina law, if the jury does not find an aggravating circumstance, someone convicted of murder could be sentenced to a term of 30 years' imprisonment or greater. See S. C. Code Ann. §16–3–20(C) (2000 Cum. Supp.). If the jury thought Shafer's release from prison was a possibility in the event the judge sentenced him, they would have been correct. To be sure, under South Carolina's sentencing scheme, the jury did not need to know what sentencing options were available to the judge in the event the jury did not find an aggravating circumstance. But that is precisely why the trial court's answers were appropriate. It explained what "life" meant for purposes of the *jury*'s sentencing option, and then added that "[p]arole eligibility or ineligibility is not for your consideration.'" App. 240.

The majority appears to believe that it could develop jury instructions that are more precise than those offered to Shafer's jury. It may well be right. But it is not this Court's role to micromanage state sentencing proceedings or to develop model jury instructions. I would decline to interfere further with matters that the Constitution leaves to the States.