

Opinion of O'CONNOR, J.

SUPREME COURT OF THE UNITED STATES

No. 96–1769

OHIO ADULT PAROLE AUTHORITY, ET AL., PETI-
TIONERS v. EUGENE WOODARD

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

[March 25, 1998]

JUSTICE O'CONNOR, with whom JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER join, concurring in part and concurring in the judgment.

A prisoner under a death sentence remains a living person and consequently has an interest in his life. The question this case raises is the issue of what process is constitutionally necessary to protect that interest in the context of Ohio's clemency procedures. It is clear that "once society has validly convicted an individual of a crime and therefore established its right to punish, the demands of due process are reduced accordingly." *Ford v. Wainwright*, 477 U. S. 399, 429 (1986) (O'CONNOR, J., concurring in result in part and dissenting in part). I do not, however, agree with the suggestion in the principal opinion that, because clemency is committed to the discretion of the executive, the Due Process Clause provides no constitutional safeguards. THE CHIEF JUSTICE's reasoning rests on our decisions in *Connecticut Bd. of Pardons v. Dumschat*, 452 U. S. 458 (1981), and *Greenholtz v. Inmates of Neb. Penal and Correctional Complex*, 442 U. S. 1 (1979). In those cases, the Court found that an inmate seeking commutation of a life sentence or discretionary parole had no protected liberty interest in release from lawful confinement. When a person has been fairly convicted and sentenced, his liberty inter-

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est, in being free from such confinement, has been extinguished. But it is incorrect, as JUSTICE STEVENS' dissent notes, to say that a prisoner has been deprived of all interest in his life before his execution. See *post*, at 2–3. Thus, although it is true that “pardon and commutation decisions have not traditionally been the business of courts,” *Dumschat, supra*, at 464, and that the decision whether to grant clemency is entrusted to the Governor under Ohio law, I believe that 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.

In my view, however, a remand to permit the District Court to address respondent's specific allegations of due process violations is not required. The Ohio Death Penalty Clemency Procedure provides that, if a stay has not yet issued, the parole board must schedule a clemency hearing 45 days before an execution for a date approximately 21 days in advance of the execution. The board must also advise the prisoner that he is entitled to a pre-hearing interview with one or more parole board members. Although the Parole Authority complied with those instructions here, respondent raises several objections to the process afforded him. He contends that 3 days' notice of his interview and 10 days' notice of the hearing were inadequate; that he did not have a meaningful opportunity to prepare his clemency application because postconviction proceedings were pending; that his counsel was improperly excluded from the interview and permitted to participate in the hearing only at the discretion of the parole board chair; and that he was precluded from testifying or submitting documentary evidence at the hearing. I do not believe that any of these allegations amounts to a due

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process violation. The process respondent received, including notice of the hearing and an opportunity to participate in an interview, comports with Ohio's regulations and observes whatever limitations the Due Process Clause may impose on clemency proceedings. Moreover, I agree that the voluntary inmate interview that forms part of Ohio's process did not violate respondent's Fifth and Fourteenth Amendment privilege against self-incrimination.

Accordingly, I join Parts I and III of the Court's opinion and concur in the judgment.