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 Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SAWYER *v.* WHITLEY, WARDEN

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

No. 91–6382. Argued February 25, 1992—Decided June 22, 1992

A Louisiana jury convicted petitioner Sawyer and sentenced him to death for a murder in which the victim was beaten, scalded with boiling water, and set afire. His conviction and sentence were upheld on appeal, and his petitions for state postconviction relief, as well as his first petition for federal habeas relief, were denied. In a second federal habeas petition, the District Court barred as abusive or successive Sawyer's claims, *inter alia,* that the police failed to produce exculpatory evidence—evidence challenging a prosecution witness' credibility and a child witness' statements that Sawyer had tried to prevent an accomplice from setting fire to the victim—in violation of his due process rights under *Brady* v. *Maryland,* 373 U.S. 83; and that his trial counsel's failure to introduce mental health records as mitigating evidence in his trial's sentencing phase constituted ineffective assistance of counsel. The Court of Appeals affirmed, holding that Sawyer had not shown cause for failure to raise his claims in his earlier petition, and that it could not otherwise reach the claims' merits because he had not shown that he was ``actually innocent'' of the death penalty under Louisiana law.

Held:

1.To show ``actual innocence'' one must show by clear and convincing evidence that but for a constitutional error, no reasonable juror would have found the petitioner eligible for the death penalty under the applicable state law. Pp.4–13.

(a)Generally, a habeas petitioner must show cause and prejudice before a court will reach the merits of a successive, abusive, or defaulted claim. Even if he cannot meet this standard, a court may hear the merits of such claims if failure to hear them would result in a miscarriage of justice. See, *e. g., Kuhlman* v. *Wilson,* 477 U.S. 436. The miscarriage of

justice exception applies where a petitioner is ``actually innocent'' of the crime of which he was convicted or the penalty which was imposed. While it is not easy to define what is meant by ``actually innocent'' of the death penalty, the exception is very narrow and must be determined by relatively objective standards. Pp.4–7.

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(b)In order to avoid arbitrary and capricious impositions of the death sentence, States have adopted narrowing factors to limit the class of offenders upon which the death penalty may be imposed, as evidenced by Louisiana's definition of capital murder as something more than intentional killing and its requirement that before a jury may recommend death, it must determine that at least one of a list of statutory aggravating factors exists. Once eligibility for the death penalty is established, however, the emphasis shifts from narrowing the class of eligible defendants by objective factors to individualized consideration of a particular defendant by the introduction of mitigating evidence. Within this framework, the Court of Appeals applied the proper standard to determine ``actual innocence'' when it required Sawyer to base his showing that no reasonable juror would have found him eligible for the death penalty under Louisiana law on the elements of the crime itself and the existence of aggravating circumstances, but not the existence of additional mitigating evidence that was not introduced as a result of a claimed constitutional error. This standard hones in on the objective factors that must be shown to exist before a defendant is eligible to have the death penalty imposed. The adoption of stricter a definition, which would limit any showing to the elements of the crime, is rejected, since, by stating in *Smith* v. *Murray,* 477 U.S. 527, 537, that actual innocence could mean innocent of the death penalty, this Court suggested a more expansive meaning than simply innocence of the capital offense itself. Also rejected is a more lenient definition, which would allow the showing to extend beyond the elements of the crime and the aggravating factors, to include mitigating evidence which bears, not on the defendant's eligibility to receive the death penalty, but only on the ultimate discretionary decision between that penalty and life imprisonment. Including mitigating factors would make actual innocence mean little more than what is already required to show prejudice for purposes of securing habeas relief and would broaden the inquiry beyond what is a narrow exception to the principle of finality. Pp.8–13.

2.Sawyer has failed to show that he is actually innocent of the death penalty to which he has been sentenced. The psychological evidence allegedly kept from the jury does not relate to his guilt or innocence of the crime or to the aggravating factors found by the jury—that the murder was committed in the course of an aggravated arson, and that it was especially cruel, atrocious, or heinous—which made him eligible for the death penalty. Nor can it be said that had this evidence been before the jury a reasonable juror would not

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have found both of the aggravating factors. The evidence allegedly kept from the jury due to an alleged *Brady* violation also fails to show actual innocence. Latter-day impeachment evidence seldom, if ever, makes a clear and convincing showing that no reasonable juror would have believed the heart of the witness' account. While the statement that Sawyer did not set fire to the victim goes to the jury's finding of aggravated arson and, thus, to his guilt or innocence and the first aggravating circumstance, it fails to show that no rational juror would find both of the aggravating factors. The murder was especially cruel, atrocious, and heinous quite apart from the arson, and, even crediting the hearsay statement, it cannot be said that no reasonable juror would have found that he was guilty of the arson for his participation under Louisiana law. Pp.13–16.

945 F.2d 812, affirmed.

REHNQUIST, C. J., delivered the opinion of the Court, in which WHITE, SCALIA, KENNEDY, SOUTER, and THOMAS, JJ., joined. BLACKMUN, J., filed an opinion concurring in the judgment. STEVENS, J., filed an opinion concurring in the judgment, in which BLACKMUN and O'CONNOR, JJ., joined.