

SUPREME COURT OF THE UNITED STATES

No. 91-7094

WILLIE LEE RICHMOND, PETITIONER v. SAMUEL A.
LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF
CORRECTIONS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT
[December 1, 1992]

JUSTICE THOMAS, concurring.

The Court holds that the concurring Arizona Supreme Court justices violated the rule of *Clemons v. Mississippi*, 494 U. S. 738 (1990), by failing to reweigh aggravating and mitigating circumstances after concluding that only two of the three aggravating circumstances found by the trial court were present in this case. Respondents do not claim that this rule is a new one for purposes of *Teague v. Lane*, 489 U. S. 288 (1989), and that it is consequently unavailable to a habeas petitioner. The reason, presumably, is that a *Teague* defense is foreclosed by *Stringer v. Black*, 503 U. S. ___ (1992), which held that “there was no arguable basis” in February 1985 to support the view that an appellate court in a weighing state “was permitted to apply a rule of automatic affirmance to any death sentence supported by multiple aggravating factors, when one is invalid.” *Id.*, at ___ (slip op., at 8). Under *Stringer*, the concurring Arizona Supreme Court justices cannot be excused for their failure to reweigh; any reasonable jurist should have known that “automatic affirmance” in a weighing state violates the Eighth Amendment.¹

¹Richmond's conviction became final on November 14, 1983—15 months before *Stringer*'s conviction became final. I cannot imagine, however, that this distinction renders *Stringer* inapplicable to this case. The decision in *Stringer* rested on the premise that the rule against automatic affirmance “emerges not

I joined the dissent in *Stringer*, and I continue to think that case was wrongly decided. In particular, I remain convinced that *Stringer* transformed *Teague*'s retroactivity principle from a rule that validates "reasonableness" into a rule that mandates "prescience." *Id.*, at ___ (slip op., at 8) (SOUTER, J., dissenting). Had *Stringer* been decided differently, petitioner could not now complain that two Arizona Supreme Court justices violated the Constitution in 1983 by neglecting to reweigh. Nevertheless, because *Stringer* is good law, and because I agree that the concurring justices in this case did not reweigh, I join the Court's opinion.

from any single case," but from a "long line of authority," *Stringer v. Black*, 503 U. S., at ___ (slip op., at 9), and that "line of authority" consists entirely of cases decided before Richmond's conviction became final, see *id.*, at ___ - ___ (slip op., at 4-8).