McKinney v. Arizona[2] is an excellent illustration of the complexity and disagreement on the Supreme Court over the death penalty. The Supreme Court held 5-4 that a court rather than a jury may reweigh improperly excluded mitigating evidence in a death penalty case on collateral review.

In 1992 James McKinney was convicted of two counts of first-degree murder. To receive the death penalty at least one aggravating circumstance must be found. A judge found aggravating circumstances in both murders and sentenced him to death. A court later found the trial judge committed so-called Eddings error by not considering McKinney's PTSD as a mitigating factor. In 2018 the Arizona Supreme Court reweighed McKinney's aggravating and mitigating circumstances and upheld his death sentence.

McKinney first argued that under Clemons v. Mississippi (1990) he should be re-sentenced by a jury. The Supreme Court disagreed in an opinion written by Justice Kavanaugh. In Clemons, the Mississippi Supreme Court found that one of the aggravators was unconstitutionally vague. The U.S. Supreme Court allowed the Mississippi Supreme Court to reweigh the permissible aggravating and mitigating evidence.

McKinney argued his case is different from Clemons because it involves improperly ignored mitigating evidence. The Supreme Court disagreed stating: “In deciding whether a particular defendant warrants a death sentence in light of the mix of aggravating and mitigating circumstances, there is no meaningful difference for purposes of appellate reweighing between subtracting an aggravator from one side of the scale and adding a mitigator to the other side.”

McKinney next argued that Clemons is no longer good law because since it was decided the Supreme Court has held in Ring v. Arizona (2002) and Hurst v. Florida (2016) that juries not judges must weigh aggravating and mitigating factors. The Court disagreed with McKinney's characterization of Ring and Hurst. According to the Court, those case held that juries must find aggravating and mitigating factors but judges may weigh them and ultimately decide on a sentence.

Finally, McKinney pointed out that a jury didn't find aggravating circumstances when he was tried, as now required by Ring and Hurst. According to the majority, this doesn't matter because Ring and Hurst don't apply retroactively on collateral review. The majority of the Supreme Court relied on the Arizona Supreme Court characterizing its 2018 re-sentencing as collateral review. McKinney and the dissent argued it was direct review to which Ring and Hurst would apply.