

SCALIA, J., dissenting

SUPREME COURT OF THE UNITED STATES

LAROYCE LATHAIR SMITH *v.* TEXAS

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF
CRIMINAL APPEALS OF TEXAS

No. 04–5323. Decided November 15, 2004

JUSTICE SCALIA, with whom JUSTICE THOMAS joins,
dissenting.

I would affirm the judgment of the Texas Court of Criminal Appeals. See *Walton v. Arizona*, 497 U. S. 639, 673 (1990) (SCALIA, J., concurring in part and concurring in the judgment).