Due process considerations can also come into play in sentencing if the state attempts to withhold relevant information from the jury. For instance, in *Simmons v. South Carolina*, the Court held that due process requires that if prosecutor makes an argument for the death penalty based on the future dangerousness of the defendant to society, the jury must then be informed if the only alternative to a death sentence is a life sentence without possibility of parole.[1175] But, in *Ramdass v. Angelone*,[1176] the Court refused to apply the reasoning of *Simmons* because the defendant was not technically parole ineligible at time of sentencing.

A defendant should not be penalized for exercising a right to appeal. Thus, it is a denial of due process for a judge to sentence a convicted defendant on retrial to a longer sentence than he received after the first trial if the object of the sentence is to punish the defendant for having successfully appealed his first conviction or to discourage similar appeals by others.[1177] If the judge does impose a longer sentence the second time, he must justify it on the record by showing, for example, the existence of new information meriting a longer sentence.[1178]

Because the possibility of vindictiveness in resentencing is *de minimis* when it is the jury that sentences, however, the requirement of justifying a more severe sentence upon resentencing is inapplicable to jury sentencing, at least in the absence of a showing that the jury knew of the prior vacated sentence.[1179] The presumption of vindictiveness is also inapplicable if the first sentence was imposed following a guilty plea. Here the Court reasoned that a trial

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[1175] 512 U.S. 154 (1994). *See also* Shafer v. South Carolina, 532 U.S. 36 (2001) (amended South Carolina law still runs afoul of *Simmons*).

[1176] 530 U.S. 156 (2000).

[1177] North Carolina v. Pearce, 395 U.S. 711 (1969). *Pearce* was held to be nonretroactive in Michigan v. Payne, 412 U.S. 47 (1973). When a state provides a two-tier court system in which one may have an expeditious and somewhat informal trial in an inferior court with an absolute right to trial *de novo* in a court of general criminal jurisdiction if convicted, the second court is not bound by the rule in *Pearce*, because the potential for vindictiveness and inclination to deter is not present. Colten v. Kentucky, 407 U.S. 104 (1972). *But see* Blackledge v. Perry, 417 U.S. 21 (1974), discussed *supra*.

[1178] An intervening conviction on other charges for acts committed prior to the first sentencing may justify imposition of an increased sentence following a second trial. Wasman v. United States, 468 U.S. 559 (1984).

[1179] Chaffin v. Stynchcombe, 412 U.S. 17 (1973). The Court concluded that the possibility of vindictiveness was so low because normally the jury would not know of the result of the prior trial nor the sentence imposed, nor would it feel either the personal or institutional interests of judges leading to efforts to discourage the seeking of new trials. Justices Stewart, Brennan, and Marshall thought the principle was applicable to jury sentencing and that prophylactic limitations appropriate to the problem should be developed. Id. at 35, 38. Justice Douglas dissented on other grounds. Id. at 35. The *Pearce* presumption that an increased, judge-imposed second