Can Juveniles Be Sentenced to Life in Prison Without the Possibility of Parole?

CASE AT A GLANCE

In 2005, the Supreme Court held that the Eighth Amendment forbids sentencing juveniles to death. Central to this holding were the Court's findings that "death is different" and children are different. Now the Court has agreed to review two cases in which juveniles were sentenced to life imprisonment without parole: *Sullivan v. Florida* and *Graham v. Florida*. Both cases involve juveniles sentenced to spend the rest of their lives in prison for nonhomicide, felony offenses.

Sullivan v. Florida
and
Graham v. Florida
Docket Nos. 08-7621 and 08-7412

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From: The First District of Florida

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ISSUE

Can Florida give two juvenile defendants life sentences without the possibility of parole for nonhomicide offenses?

FACTS

Sullivan and *Graham* are two "companion" cases for which the Court has granted separate argument. Because the cases have important differences, separate fact analyses are given for each case before moving into a discussion of the legal issues in both cases.

Sullivan

In 1989, Joe Sullivan and two older accomplices robbed an elderly woman in Escambia County, Florida. Sullivan and one accomplice returned later that day and Sullivan allegedly beat and raped the 72-year-old woman. Pursuant to an automatic transfer for this serious felony, Sullivan faced trial in adult criminal court. After a one-day trial, a six-member jury convicted Sullivan and sentenced him to life in prison without the possibility of parole. He was 13 years old.

Sullivan appealed his conviction, but his court-appointed lawyer filed an *Anders* brief. An attorney files an *Anders* brief, named after *Anders v. California* (1967), when he or she wishes to withdraw from a case believing an appeal to be frivolous. The state intermediate appellate court affirmed the conviction without an opinion in 1991. The Florida Supreme Court dismissed review without an opinion later that year.

In 1992, Sullivan filed a petition for post-conviction review without an attorney—a petition that was denied in 1996. Sullivan did not appeal the denial of this petition for post-conviction relief. Then, the U.S. Supreme Court struck down the death penalty for juvenile murderers in *Roper v. Simmons,* 543 U.S. 551 (2005). Sullivan in turn filed a motion for post-conviction relief under Florida Rule of Criminal Procedure 3.850.

This measure provides that a post-conviction challenge to a criminal sentence ordinarily may not be filed in a non-death penalty case more than two years after the conviction unless one of three exceptions applies. One of those exceptions is that there was the creation of a new constitutional right that was not available earlier.

Sullivan contended that the Supreme Court's decision in *Roper* established a new constitutional right that gave the courts the power to entertain his latest post-conviction petition. In October 2007, a Florida trial court dismissed the motion, finding that *Roper* only applied to death-penalty cases and should not be extended.

Sullivan appealed to a state intermediate appellate court, which affirmed without an opinion in 2008. Because the Florida Supreme Court cannot hear a case from a per curiam affirmed decision of the lower court, Sullivan petitioned the U.S. Supreme Court for review. The Court granted his petition on May 4, 2009.

Graham

In 2003, 16-year-old Terrance Jamar Graham attempted to rob a restaurant with two other individuals. One of the other perpetrators hit the restaurant manager over the head with a steel bar. Prosecutors charged Graham as an adult with armed burglary with assault or battery and attempted armed robbery. Graham pled guilty to the crimes in December 2003. Under his guilty plea, he spent 12 months in a pretrial detention facility and was to be on probation for three years.

Upon his release from the detention facility in June 2004, Graham apparently returned to his previous life style. In December 2004, the 17-year-old Graham was arrested after fleeing in his car and later on foot from the police after participating in a home-invasion robbery. Later, his probation officer filed an affidavit alleging that Graham had violated terms of his probation, including possessing a firearm, committing a home invasion, and association with persons engaged in criminal activity.

In December 2005 and January 2006, the court held hearings on Graham's probation violations. The court revoked Graham's probation and sentenced him to life imprisonment. Graham's two older accomplices in the armed home invasion received sentences of 11 and 35 years respectively.

Graham then filed a post-sentencing motion with the trial court challenging the legality of his sentence on Eighth Amendment grounds. That motion was denied. He next appealed to the Florida District Court of Appeal. The appeals court denied the claim and refused to follow the *Roper* line of reasoning because "death is different." The Florida Supreme Court declined to exercise its discretionary jurisdiction. Graham then petitioned the U.S. Supreme Court, which granted review on May 4, 2009.

CASE ANALYSIS

The Supreme Court has numerous options in these two cases. The Court could invalidate life without parole for all juvenile defendants, as it did with the death penalty in *Roper v. Simmons* (2005). Or it could limit the harsh penalty of life without parole to only the most heinous of offenses—murder.

On the other hand, the Court could uphold life without paroles in both cases, or it could make a differentiation based on age. This last distinction would be similar to what the Court did with respect to the death penalty for juveniles in the late 1990s when it invalidated the death penalty for those under 16 in *Thompson v. Oklahoma,* 487 U.S. 815 (1988), but upheld it for older juveniles (16- and 17-year-olds) in *Stanford v. Kentucky,* 492 U.S. 361 (1989) (later overruled by the Court in *Roper*).

Speculation also abounds as to why the Court took on two juvenile cases rather than just one. As mentioned, the Court could have taken these cases to make an age differentiation between younger juveniles like Sullivan and older juveniles like Graham. Or the Court could have taken both cases because there is concern that the *Sullivan* case presents problems from a procedural standpoint.

An initial question the Court will likely confront is whether Sullivan's claim is procedurally barred by Florida state law. The Court granted review on the basis of a petition for certiorari that listed two questions, the second of which asked:

Given the extreme rarity of a life imprisonment without parole sentence imposed on a 13-year-old child for a nonhomicide and the unavailability of substantive review in any other federal court, should this Court grant review of a recently evolved Eighth Amendment claim where the state court has refused to do so?

The State of Florida as respondent contends in its brief that this question requires an analysis of whether the claim is procedurally barred under state law.

Florida makes a two-fold argument. First, it argues that there was no new constitutional right created by *Roper v. Sullivan* because *Roper* applies only to the death penalty. Thus, respondent claims that Florida two-year limitation on filing post-conviction motions should be the guiding force in this case as it furthers the state's interest in the finality of convictions and sentences.

Second, Florida asserts that in the unlikely event that *Roper* could be stretched to cover the creation of a new constitutional right, Sullivan, who is now in his early 30s, could have raised a similar issue years earlier. According to the state Sullivan already had the opportunity to make a similar challenge at the time of his first post-conviction petition based on the U.S. Supreme Court's decision in *Thompson v. Oklahoma,* 487 U.S. 815 (1988). In that decision, the Court in a plurality opinion by Justice John Paul Stevens invalidated the death penalty for juveniles under the age of 16.

Simply stated, Florida argues that Sullivan could have argued 18 years ago in his initial post-conviction proceeding that his life sentence without parole was cruel and unusual under the Court's reasoning in the death penalty case of *Thompson v. Oklahoma.* The state asserts that the Florida trial dismissed Sullivan's post-conviction petition on the basis of an adequate and independent state ground that should not be disturbed by the U.S. Supreme Court.

"Considering the reasoning of the plurality and Justice O'Connor [in *Thompson v. Oklahoma*], Sullivan could have made the same argument he makes now in 1989 or in a timely post-conviction motion," the respondent writes.

Sullivan assumes in his brief that there are no procedural bars to his appeal and proceeds to make a full-blown analysis of the Eighth Amendment. Sullivan focuses his energies on arguing that *Roper's* "constitutional logic" that the death penalty can never be applied to juveniles should be extended to a defendant who was only 13 when he committed his crime. To Sullivan, sentencing a 13-year-old to life in prison without the possibility of parole is just as bad as a death sentence.

Sullivan emphasizes how young adolescents are less mature and less responsible than not only adults, but also older teenagers. "Not until age 16 do adolescents obtain something close to a mature sense of perspective," Sullivan writes. "When *Roper*'s constitutional methodology is applied to the signature characteristics of young adolescents … a firm basis emerges for the finding that a child of 13 cannot legitimately be consigned to lifelong incarceration with no possibility of ever being considered fit for release on parole."

Sullivan also emphasizes how "freakishly rare" it is to impose such a harsh sentence on 13- and 14-year-olds. According to Sullivan, this rarity is yet another sign that such a sentence is cruel and unusual.

"Whatever may be the case for older children, life imprisonment without parole sentences for children of 13 are so vanishingly rare as to make their repudiation by contemporary American society unmistakable," Sullivan writes. "There are only nine persons in the United

States under life-without-parole sentences for offenses committed at age 13, and only 64 more serving life without parole for offenses at 14."

Given the infrequency of this sentence being applied to such young juveniles, Sullivan asserts that it violates the proportionality principle undergirding Eighth Amendment law, as well as the oft-cited "evolving standards of decency" used by the Court for nearly 40 years.

Graham, on the other hand, does not focus on the age differentiation and for obvious reasons—he was an older juvenile. Instead, Graham focuses on the fact that his underlying offense was not a homicide and on the basic arguments that juveniles are different than adults. Graham emphasizes that "he is one of a handful of juveniles, in any State, who has been sentenced to life without parole for a nonhomicide offense such as armed burglary." He contends that the disproportionate nature of his harsh sentence can be seen by comparing the typically less harsh sentences given adult defendants convicted of violent crimes or armed burglaries.

Florida responds that *Roper* is a death penalty case and, as the U.S. Supreme Court has said numerous times, "death is different." Thus, the state contends that the "constitutional logic" of *Roper* does not extend beyond the death penalty into an area—the length of criminal sentences—in which states generally are accorded a healthy dose of deference. Furthermore, according the Florida, the life without parole does not violate any "evolving standards of decency" as many states still make that sentence available to juvenile defendants.

The state cites a litany of decisions—*Rummel v. Estelle,* 445 U.S. 263 (1980), *Hutto v. Davis,* 454 U.S. 370 (1982), *Harmelin v. Michigan,* 501 U.S. 957 (1991), *Ewing v. California,* 538 U.S. 11 (2003), and *Lockyer v. Andrade,* 538 U.S. 63 (2003)—in which the Supreme Court refused to disturb state-court sentences of life without parole for nonviolent defendants. Florida then emphasizes the violent nature of Sullivan's crime—a "brutal rape of an elderly woman." It cites the same cases in response to Graham, writing: "Because a life without parole sentence is constitutional for the mere possession of 672 grams of cocaine (*Harmelin*), and a life sentence is constitutional for the commission of three nonviolent theft-related offenses (*Rummel*), it is constitutional for Graham's violated armed burglary."

However, all of those cited cases involved adult defendants as opposed to a 13- or 16-year-old. Sullivan in turn emphasizes the reduced cognitive development of especially younger juveniles and the possibility that such younger individuals are more amenable to rehabilitation. However, Florida counters that a life sentence without parole is sometimes needed to protect society from certain violent, recidivist offenders—even those of a young age.

SIGNIFICANCE

These cases could lead to the extinguishment of life sentences without parole for all juveniles—much as the Court eliminated the death penalty for all juveniles in *Roper*. Alternatively, the Court could draw a line that says, when it comes to juveniles, life without parole is appropriate only for the most heinous of offenders—juvenile murderers. This would be akin to the Court's treatment of the death penalty for adults. The Court also could fashion a rule based on the juvenile's age, perhaps differentiating between older juveniles and younger juveniles, the approach the Court took with respect to the death penalty for juveniles in its late 1980s decisions in *Thompson* and *Stanford*. Or the Court could show deference to state legislatures and simply reserve the issue to the states.

As petitioner Sullivan points out, juveniles who commit serious felonies at age 13 potentially are subject to life without the possibility of parole in 27 states, as those states are silent on the minimum age for such sentence. Further, 14-year-olds are susceptible to such a sentence in 41 states. The Court's decision thus could have an immediate impact on juvenile defendants in those states.

The Court's decisions in these two cases are also important because they will come at a time when many states impose mandatory sentences for a wide variety of criminal defendants. The Court could provide for meaningful proportionality review in noncapital Eighth Amendment cases. On the other hand, it could cite federalism concerns and uphold the principle that federal courts should not interfere with state legislatures and their determination as to the appropriateness of criminal sentences.

Interestingly, there is a measure before Congress—H.R. 2289 introduced by Rep. Bobby Scott—that would require mandatory parole hearings after 15 years for juveniles sentenced to life. The measure provides that "each State shall have in effect laws and policies under which each child offender who is serving a life sentence receives, not less than once during the first 15 years of incarceration, and not less than once every 3 years of incarceration thereafter, a meaningful opportunity for parole or other form of supervised release."

These two cases also afford the Court another opportunity to discuss the relevance of international law. In the recent death penalty decisions of *Roper* and *Atkins v. Virginia,* 536 U.S. 304 (2002), the majority cited international treaties and human rights provisions that oppose the death penalty for juvenile defendants and mentally retarded inmates respectively. Citing those authorities certainly did not sit well with Justice Scalia who wrote passionately about the issue in his dissents in both decisions.

Amnesty International in its amicus brief explains: "Every other country in the world has rejected the practice of giving this sentence to offenders who were under 18 at the time they committed a crime. Although a few countries technically permit the sentence, no known persons are actually serving the sentence outside the United States."

It could also prove relevant that the *Sullivan* case involves a defendant who suffers from disabilities. The Amicus Disability Rights Legal Center notes in its amicus brief that a disproportionate number of juvenile offenders suffer from disabilities, but whether the Court finds this to be a persuasive issue will be seen.

Finally, it must be noted that Sullivan introduced one more fact that may catch the eye of some of the justices—a disturbing racial aspect. According to Sullivan, "all of the 13- and 14-year-olds serving [life without parole] for non-homicide offenses are African American." In fact, of the 73 13- or 14-year-old defendants serving such sentences, 70 percent are racial minorities.

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PREVIEW of United States Supreme Court Cases, pages 76–79.

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