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Death Penalty for Juveniles is Cruel and Unusual

Roper v. Simmons

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On March 1, 2005, the United States Supreme Court ruled that the Eighth and Fourteenth Amendments to the Constitution forbid the imposition of the death penalty upon offenders who were under the age of 18 when their crimes were committed. The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The provision is applicable to the states through the Fourteenth Amendment. The Eighth Amendment governs the constitutional permissibility of the death penalty for a juvenile offender.

In a 5-4 opinion authored by Justice Kennedy, the Court affirmed the holding of the Missouri Supreme Court that imposition of the juvenile death penalty had "become truly unusual over the last decade," *State ex rel. Simmons v. Roper*, 112 S. W. 3d 397 *at* 399 (Mo., 2003), and therefore violates the Constitution.

Background

Christopher Simmons committed a murder when he was 17 years old. With an accomplice, he bound and gagged a woman with duct tape, robbed her, and took her to a bridge over the Meramec River near Fenton, Missouri. There, Simmons tied her hands and feet together with wire and threw her into the waters below, drowning her. Simmons was convicted of capital murder and sentenced to death. His initial appeals and habeas corpus petition were rejected. He filed for post-conviction relief after the Court's decision in *Atkins v. Virginia*, 536 U.S. 304 (2002), which holds that the Constitution prohibits imposing the death penalty upon a mentally retarded defendant. The Missouri Supreme Court agreed with Simmons that the reasoning in *Atkins* established that the Constitution prohibits the execution of a person who was under 18 when the crime was committed.

Society's Standards of Decency

In 1988, the United States Supreme Court determined in *Thompson v. Oklahoma*, 487 U.S. 815 (1988) that society's standards of decency do not permit the execution of any offender under the age of 16 at the time he committed the crime. The following year, upholding *Thompson*, the Court held that there was no national consensus sufficient to find that the execution of offenders age 16 or over at the time of the crime constituted cruel and unusual punishment. *Stanford v. Kentucky*, 492 U.S. 361 (1989). On the same day, the Court decided that there was also no national consensus prohibiting the imposition of the death penalty upon a mentally retarded person. *Penry v. Lyn*, 492 U.S. 302 (1989).

In 2002, in its decision in *Atkins v. Virginia,* the Court revisited its 1989 decision in *Penry* and acknowledged that the standards of decency set by the states had evolved during the intervening 13 years sufficient to demonstrate a national consensus that the execution of the mentally retarded represents cruel and unusual punishment. The evolution of society's standards of decency was evidenced by the fact that while in 1989 only two states prohibited the execution of a mentally retarded person, by 2002 only a minority of states permitted the practice.

As the Court had reconsidered the permissibility of execution of the retarded in *Atkins*, it likewise reconsidered the permissibility of the execution of an offender under the age of 18 in *Roper*, looking for guidance to the enactments of the legislatures that had considered the issue since its holding in *Stanford*. As of the time of the decision in *Roper*, 20 states, including Virginia, did not specifically prohibit the execution of a juvenile offender; 12 states had rejected the death penalty altogether; and 18, either by legislation or court decision, excluded juveniles from its reach. In the 15 years between the *Stanford v. Kentucky* and *Roper v. Simmons* decisions, five states had abandoned the death penalty for juvenile offenders. As the starting point in its decision, the Court considered this growing accord in the law, as well as the rare use of the death penalty even in those states where the penalty still was available for juveniles.

Categorically Less Culpable

The Court observed that the trend toward abolition of the juvenile death penalty was evidence that society views juveniles as "categorically less culpable than the average criminal." [1] The Court found three differences between juveniles and adults that prohibit the classification of juveniles among the worst offenders. First, juveniles display a lack of maturity and an undeveloped sense of responsibility as compared to adults. Second, juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. Finally, the character of juveniles is not as well formed as that of adults and personality traits of juveniles are more transitory.

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Retribution and Deterrence

Having stated in *Gregg v. Georgia*, 428 U.S. 153 (1976) that the two distinct purposes served by the death penalty are "retribution and deterrence of capital crimes by prospective offenders," the Court observed that neither of these justifications for the penalty hold as much sway when the offender is a juvenile.

> *Whether viewed as an attempt to express the community's moral outrage or as an attempt to right the balance for the wrong to the victim, the case for retribution is not as strong with a minor as an adult. Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.*
>
> *As for deterrence, it is unclear whether the death penalty has a significant or even measurable deterrent effect on juveniles…* [2]

The Court added yet another argument for its condemnation of the death penalty for juvenile offenders: "the stark reality that the United States is the only country in the world that continues to give official sanction to the juvenile death penalty." [3] While the court acknowledged that the interpretation of the Eighth Amendment was its responsibility, it can look to laws of other countries and to international authorities for instruction. The Court did so and found "overwhelming weight of international opinion against the juvenile death penalty." [4]

A bill to prohibit capital punishment of juvenile offenders was offered during the 2005 General Assembly Session, but no action was taken pending the decision discussed here. The United States Supreme Court has determined whether a punishment is cruel and unusual by looking to the "evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles,* 356 U.S. 86, 100-101, 2 L. Ed. 2d 630, 78 S. Ct. 590 (1958). The decision in *Roper v. Simmons* defines for the country and for Virginia the current limits upon capital punishment.

Notes

Footnotes use LEXIS pagination, which is subject to change pending release of the final published version.

[1] 2005 U.S. LEXIS 2200, p. 9.
[2] Id at p. 10.
[3] Id at p. 12.
[4] Id at p. 13.