
No Life Without Parole for Juveniles Who Don’t Kill

by Jason Allen

In line with recent death penalty decisions, Graham v. Florida demonstrated the Supreme Court’s intent to reduce the possible punishment for criminals with diminished capacity. The Court has prohibited the death penalty for minors and for the mentally retarded. On May 17, 2010, the United States Supreme Court extended its logic in Roper v. Virginia to proscribe juvenile life sentences without the possibility of parole (“JLWOP”) for non-homicide offenses.

In 2003, 16 year old Terrance Graham took part in an armed robbery during which one of his accomplices attacked a bystander. Graham was convicted of armed burglary with assault or battery and attempted armed robbery and sentenced to three years of probation. While on probation, Graham was arrested for robbing a house at gunpoint. At the violation of probation hearing he only admitted to fleeing from the police, but the judge determined that Graham did take part in the home-invasion robbery. Before handing down Graham’s sentence, the judge declared that Graham had been afforded the opportunity to turn his life around and refused, and nothing the court could do would deter Graham’s criminal conduct. The judge cited the court’s responsibility to protect the community, and sentenced Graham to life without the possibility of parole for violating his probation on the armed burglary charge. The appellate court performed a Harmelin analysis and found that the Graham’s sentence was not grossly disproportionate to the crimes. The court also found that Graham was not amenable to rehabilitation, taking into consideration his age.

Justice Kennedy, writing for the majority, began with a review of Eighth Amendment jurisprudence, stating that questions of cruel and unusual punishment focus on proportionality, and have historically followed two paths. One path challenges the length of a sentence based on the facts of the case, which requires a Harmelin analysis. The other path consists of categorical exclusions. The Supreme Court has introduced for the death penalty. Graham’s case was unique because it sought a categorical exclusion to a term-of-years sentence, combining the two approaches to proportionality.

The Court went on to consider whether a national consensus existed for JLWOP for non-homicide offenses. Graham argued that only 109 people received JLWOP for non-homicide offenses, demonstrating a national consensus against the penalty. Florida countered by indicating thirty-seven states permit the sentence. The Supreme Court decided that practice must be considered alongside legislation. Because only eleven states have used JLWOP for non-homicide offenses, the Court reasoned that the other twenty-six states have not expressly approved of the sentence and found a national consensus against non-homicide JLWOP.

Next, the Court weighed non-homicide JLWOP against the legitimate penological goals: retribution, deterrence, incapacitation and rehabilitation. In its analysis of these goals, the Court’s finding of twice diminished moral culpability for non-homicide juvenile offenders played a crucial role. This twice diminished moral culpability was based on the age of the offender and the nature of the crime.

The Court found that non-homicide JLWOP does not serve the goal of retribution. Retribution requires that the sentence must be directly related to the culpability of the offender. The Court cited Roper, which held that the most severe penalty—the death penalty—could not be justified even for a juvenile murderer. This reasoning from Roper covered the first level of diminished culpability; the Court addressed the second level by...
holding that the JLWOP could not be justified for the less culpable juvenile offender.

The Court also relied on Roper in finding that deterrence could not justify non-homicide JLWOP. The immaturity that makes juveniles less culpable than adults also makes them less susceptible to deterrence. Additionally, because JLWOP is rarely used for non-homicide crimes, juveniles would lack notice, further lessening the legitimacy of deterrence. The Court did recognize that some juveniles may be deterred by JLWOP but ultimately found that the twice diminished culpability outweighed any limited deterrence.

Focusing on psychiatry and juveniles’ ability for growth, the Court found that incapacitation could not justify JLWOP. JLWOP could only appropriate once an offender was found to be incorrigible, and again citing Roper, the Court noted that even psychiatrists have trouble determining incorrigibility in youths. The Court stated that even if Graham should be separated from society for life, that judgment could not be made from the outset. Juveniles possess a capacity for growth and maturity not found in adults, and the Court decided that non-homicide juvenile offenders deserve a chance to demonstrate that growth. The Court also added that incapacitation cannot override other penological considerations.

Finally, the Court addressed rehabilitation. For JLWOP, rehabilitation is the most straightforward of the four goals. The Court found that JLWOP rejects rehabilitation by determining that a juvenile should never rejoin society. The majority indicated that juvenile offenders are most receptive to and in need of rehabilitation. For all these reasons, the Court held that the penalological goals, limited culpability of juveniles and severity of life sentences make non-homicide JLWOP cruel and unusual punishment.

Noting that categorical rules are imperfect, the Court justified this bright-line rule in the face of two counterarguments. First, the Court expressed concern that a judge or jury may sentence a juvenile to life without parole who lacks the requisite culpability because the sentencing determination is a subjective judgment. Second, the Court considered factoring a juvenile’s age into account at sentencing for case-specific inquiries. The Court dismissed this approach because the sentencing judge may not be able to distinguish between the incorrigible from those who might change. Concurring, Chief Justice Roberts indicated that he would have reached the same end for Graham through a Harmelin review, but rejected the categorical rule.

Justices Thomas and Scalia, in dissent, emphasized states’ rights in rejecting the majority’s perceived national consensus and commended states for reserving JLWOP for the worst cases. They also noted that JLWOP does serve the goals of incapacitation and deterrence. Finally, the dissent lamented that the majority relied on a medical generalization concerning juvenile maturity in creating a categorical rule.

Although the Court banned JLWOP for non-homicide crimes, juvenile offenders have no guarantee of freedom. Juveniles who do not kill must be afforded the opportunity to demonstrate growth and maturity, and must be eligible for parole or special release if they receive life sentences. Parole or release does not have to be granted, but the decision to permanently imprison non-homicide offenders is no longer a judge’s choice. Ultimately, the Court’s decision will leave Florida playing catch-up, with new sentences required for 77 juvenile offenders, including Graham.

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2 Roper v. Simmons, 543 U.S. 551 (2005) (Kennedy, J., holding that the death penalty for crimes committed while a minor violates the 8th Amendment).
4 Harmelin v. Michigan, 501 U.S. 957, 1005 (1997) (Kennedy, J., concurring) (sets forth a two part test for determining proportionality: if the gravity of the offense and severity of the sentence lead to an inference of gross disproportionality, then the sentence is compared with other sentences in the jurisdiction and with sentences for same crime in other jurisdictions).
5 Id.