



Major Supreme Court Ruling: Kids Who Didn't Kill Anyone Should Not Have to Die in Prison

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Children who commit crimes other than murder can no longer face a sentence of life without parole, the U.S. Supreme Court ruled Monday in a highly anticipated decision that civil rights lawyer Bryan Stevenson calls "an incredibly important win for kids who've been condemned to die in prison."

Stevenson represents Joe Sullivan, who was sentenced to life without parole (LWOP) when he was just 14 years old. Sullivan, one of 77 prisoners in Florida serving LWOP for non-homicide crimes committed before the age of 18, was the defendant in one of two related cases before the court. His case, *Sullivan v. Florida*, was "dismissed as improvidently granted" given the ruling in the other case, *Graham v. Florida*, which bluntly held that "the Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide." (Read [AlterNet's two-part series on Sullivan and Graham](#) for an explanation of both cases.)

The ruling was based heavily on the court's 2005 decision in *Roper v. Simmons*, which abolished the death penalty for juvenile defendants on the grounds that it violates the Eighth Amendment ban on cruel and unusual punishment. Writing for the majority, Justice Anthony Kennedy drew a parallel between the death penalty and life without parole, noting that while "it is true that a death sentence is 'unique in its severity and irrevocability,' (*Gregg v. Georgia*) ... life without parole sentences share some characteristics with death sentences that are shared by no other sentences."

"The State does not execute the offender sentenced to life without parole, but the sentence alters the offender's life by a forfeiture that is irrevocable," Kennedy wrote. "It deprives the convict of the most basic liberties without giving hope of restoration, except perhaps by executive clemency -- the remote possibility of which does not mitigate the harshness of the sentence."

Explaining why LWOP is "an especially harsh punishment for a juvenile," Kennedy wrote: "Under this sentence a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender. A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only."

When it comes to judicially mandated sentencing reform, the ruling is significant: the *New York Times'* Adam Liptak [points out](#) that it "expanded a principle the court has never endorsed outside the death penalty -- that an entire class of offenders may be immune from a given form of punishment." At the same time, for juvenile offenders

serving LWOP, the ruling will have limited reach. While 37 states and the federal government have life without parole on the books for non-homicide crimes, of the more than 2,500 such prisoners with no hope of parole, the court's decision will apply to only some 129 prisoners who were convicted of non-homicide crimes. This means that prisoners like Sara Kruzan, who killed her abusive pimp when she was 16 years old, remain ineligible for relief.

What's more, the effects of the ruling are hardly automatic: the decision means that prisoners are entitled to a new sentencing hearing, not immediate release. This presents a daunting task for the prisoners and their families: In a phone call with reporters on Monday, Bryan Stevenson pointed out that "most of the kids who've been sentenced to life without parole have no legal representation," an egregious failing of the criminal justice system if there ever was one. Ensuring that all of these prisoners who are entitled to new sentencing hearings are able to get lawyers, he said, will be "a big challenge going forward."

Another major caveat: According to the ruling, a state can still sentence juveniles to extremely long prison terms that, for all practical purposes, come close to life without parole, so long as there is some possibility they will be able to appeal for parole. "The State need not guarantee the offender eventual release," Kennedy wrote, "but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term."

Nonetheless, advocates for juvenile offenders praised the decision, with many characterizing it as a step in the right direction. "The reality of course, is that the sentence is focused on non-homicides," Alison Parker, director of Human Rights Watch's U.S. program and co-author of *The Rest of Their Lives: Life without Parole for Child Offenders in the United States*, told AlterNet, pointing out that international human rights law prohibits any sentences of life without parole for juveniles, period. But, she said, "I think a first step is the right way to frame it. What we are encouraged by are aspects of the court's ruling that embrace what human rights law says about this issue."

Donna Pfender, founder of the Pennsylvania-based Fight For Lifers West, which filed an amicus brief in the case before the court, told AlterNet that she never expected the court to rule out juvenile LWOP entirely, but the ruling "gives us hope," particularly in a state that sentences more juvenile lifers than any other state in the country. Pfender, whose daughter is serving a life sentence, cited the case of Jordan Brown, a 12-year-old accused of killing his pregnant stepmother when he was 11. He faces charges of life without parole in an adult courtroom based on the fact that he has shown no remorse for his crime. (He also insists on his innocence.) "That's what we're up against in Pennsylvania."

Asked about the thousands of prisoners who will remain unaffected by the court's ruling, Stevenson noted that "there are a lot of states already re-evaluating the propriety of life without parole for any juvenile crime."

"Texas has abolished life without parole for juveniles for homicides and non-homicides," he said. "Colorado has done that. There are courts and legislatures around the country that are taking up this issue, and I think ... this discussion, which

I believe will be really energized by today's decision, will continue in a broader context."

'A clear ruling about the difference between children and adults'

In an unexpected move, Chief Justice John Roberts voted with the majority -- Justices Kennedy, Stevens, Ginsburg, Breyer and Sotomayor -- but in his separate opinion, he made it very clear that had the case involved a different defendant in a different state, he may well have ruled differently.

"Terrance Graham committed serious offenses, for which he deserves serious punishment," Roberts wrote. "But he was only 16 years old, and under our Court's precedents, his youth is one factor, among others, that should be considered in deciding whether his punishment was unconstitutionally excessive. In my view, Graham's age -- together with the nature of his criminal activity and the unusual severity of his sentence -- tips the constitutional balance ..."

I would not, however, reach the same conclusion in every case involving a juvenile offender. Some crimes are so heinous, and some juvenile offenders so highly culpable, that a sentence of life without parole may be entirely justified under the Constitution.

The dissenting opinion was written by Justice Clarence Thomas, who, Justice John Paul Stevens said scathingly, "would apparently not rule out a death sentence for a \$50 theft by a 7-year-old." Thomas decried the court's imposition of a categorical rule "banning life-without-parole sentences not just in this case, but in every case involving a juvenile non-homicide offender, no matter what the circumstances." He also pointed out that, contrary to Kennedy's suggestion that the country is moving away from harsh sentences for kids, "states over the past 20 years have consistently increased the severity of punishments for juvenile offenders" -- a trend he evidently sees no problem with.

Devoted right-winger that he is, Thomas was also offended by the majority's consideration of international law ("The United States is the only nation that imposes life without parole sentences on juvenile non-homicide offenders," Kennedy wrote) -- so offended, in fact, he addressed it only in small print. "I confine to a footnote the Court's discussion of foreign laws and sentencing practices because past opinions explain at length why such factors are irrelevant to the meaning of our Constitution or the Court's discernment of any longstanding tradition in *this* Nation," he wrote.

When *Roper* was decided in 2005, conservatives whipped up outrage over the notion that international law or practice should have any bearing on what happens in the American criminal justice system; in its argument before the court last fall, the State pointed out that international treaties such as the UN Convention on the Rights of the Child have never been ratified by the United States. (As if that is something to be proud of.) But as Kennedy pointed out in his decision, quoting *Roper*, "The question before us is not whether international law prohibits the United States from imposing the sentence at issue in this case. The question is whether that punishment is cruel and unusual."

In that inquiry, 'the overwhelming weight of international opinion against' life without parole for non-homicide offenses committed by juveniles 'provide[s] respected and significant confirmation for our own conclusions.'"

It would be safe to predict that when Elena Kagan confronts her interrogators during her confirmation hearings, Congressional right-wingers will challenge her to disavow any latent sympathy she might harbor toward international law, as they did with Sonia Sotomayor. Until then, the human rights community sees the willingness of the court to embrace global human rights standards where U.S. governments have failed as a significant victory.

"This decision is a clear ruling about the difference between children and adults, and that for us is a very important victory," says Alison Parker, stressing the importance of "the notion that one needs to look at the nature of the offense but also the characteristics of the offender."

"These are basic concepts that are also in international human rights law. We're pleased to see the court understand the importance of the international consensus against the use of juvenile life without parole sentences in its opinion."

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