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Justices will scrutinize life sentences for youths

Cases of two Florida juveniles raise questions about penalty for non-homicide crimes

By Robert Barnes
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Thursday, October 29, 2009

It did not take long for the judge to determine that the convicted rapist in front of him was irredeemable.

"He is beyond help," Judge Nicholas Geeker said of Joe Harris Sullivan. "I'm going to try to send him away for as long as I can."

And then Geeker sentenced Sullivan to life in prison without the possibility of parole. At the time, Sullivan was 13 years old.

Now, 20 years after that sentencing in a courtroom in Pensacola, Fla., the Supreme Court will consider whether Sullivan's prison term -- and what his supporters say is an only-in-America phenomenon of extreme sentences for juveniles -- violates the Constitution's prohibition of cruel and unusual punishment.

The case -- which has drawn widespread notice and briefs from former senator Alan Simpson (R-Wyo.) and others describing their own youthful crimes -- is likely to be a cardinal criminal justice decision for the court this term.

It is a natural outgrowth of the court's bitterly divided ruling in 2005 that juveniles cannot be executed for murders they commit.

Those challenging sentences of life without parole for teenagers base their optimism on words in Justice Anthony M. Kennedy's majority opinion in that case: "The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. . . . It would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed."

Sullivan is represented by Bryan Stevenson of the Equal Justice Initiative in Alabama, who said his client's sentence is no different from the punishment the court found unconstitutional.

"They are both effectively death sentences," Stevenson said in an interview. "One is

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death by execution, and the other is death by incarceration, but they are both terminal sentences."

Only two 13-year-olds in the country have been sentenced to life without parole for crimes that were not homicides, Stevenson said, and both of them are held in Florida.

Florida officials would not discuss Sullivan's case before the November arguments, but their brief to the court said states are within their rights to lock up forever those thought to pose a perpetual threat to society.

"There is no consensus against life sentences for juveniles, particularly for heinous crimes such as sexual battery," Florida Solicitor General Scott Makar wrote.

Across the country, 111 people are serving life sentences without parole for crimes they committed as juveniles that did not result in a death, according to one report; 77 of them are locked up in Florida, for crimes including armed robbery and carjacking. The state took a get-tough approach in the 1990s in response to a crime wave that was "compromising the safety of residents, visitors, and international tourists, and threatening the state's bedrock tourism industry," Florida's brief to the court states.

That brief came in the case of Terrance Jamar Graham, a second petition the court accepted. Graham, of Jacksonville, received a

life sentence after being part of a group that robbed a barbecue restaurant when he was 16; while on probation a year later, he was part of an armed burglary. Again, a judge doubted Graham's ability to ever change his ways; his accomplices served short sentences.

In accepting both cases and deciding to hear them separately, the court gives itself a wide range of issues to ponder. The justices may rule that such sentences are acceptable for 17-year-olds, for instance, but not 13-year-olds. They could look at the relative seriousness of the crimes, or differentiate the non-homicides in both cases with crimes in which someone is killed.

Sullivan, who his lawyer said had been living on the streets since he was 10, had a troubled history with the law. He had 17 offenses before the crime at issue. In 1989, he and two friends burglarized the home of a 72-year-old woman one day while she was

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away, then returned later. The woman was raped by one of the juveniles; she never saw his face, identifying him only as a "dark, colored boy." But she remembered that he said something like, "If you can't identify me, I may not have to kill you."

At the one-day trial, Sullivan was made to say the words over and over. The victim listened and said: "It's been six months. It's hard, but it does sound similar."

The other boys singled out Sullivan as committing the rape.

"The conviction itself was very questionable," Stevenson said. "We do think he's innocent."

But that is not at issue in the case before the Supreme Court. Stevenson only seeks to have Sullivan, now 33, resentenced so that at some point he becomes eligible for release.

Stevenson contends that Florida made no conscious policy decision that 13-year-olds should be eligible for life without parole for a non-homicide. No state that has debated the question has set the age that low. Instead, he said, Sullivan and others were caught up in a legislative reaction to escalating crime.

"What happened is we lowered the minimum age for trying kids as adults and brought them into the adult system, and we expanded the range of very harsh sentences

for an adult, and these two things have collided," he said.

Besides the two Floridians serving life sentences for non-homicides committed at 13, seven others have received that sentence for crimes resulting in a death, Stevenson said.

But the state of Florida and its supporters said that is evidence that the sentences are carefully applied to the worst of the worst.

"It is a rare and agonizing decision to sentence a juvenile to life-without-parole," said a brief filed by Louisiana and 18 other states. "But rare does not mean unconstitutional. Rather, rarity is an index of mercy -- of reluctance to take this severe step."

The National District Attorneys Association, supporting Florida, said that while life without parole for juveniles might be

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unusual, "permanent incarceration for the most violent, hardened juvenile offenders is by no means 'cruel.' "

Sullivan and Graham are supported by a wide-ranging group of organizations: the American Bar Association, the American Medical Association, the American Psychological Association, and academics and social scientists who argue that juveniles cannot be held responsible for their actions in the same way adults are. For the same reason, they say, younger teenagers are not entrusted with decisions such as voting, marrying or drinking.

A group of educators and social scientists told the court that such research was crucial to the 2005 decision that juveniles should not be subject to the death penalty. "The principal purposes of sentencing -- punishing the culpable and deterring the rational -- are not furthered by denying the possibility of parole to adolescents," the group said.

Graham and Sullivan are also supported in an unusual friend-of-the-court brief by former juvenile offenders such as Simpson, director and actor Charles Dutton, and a poet, a software executive and a former assistant U.S. attorney.

"At some point, you have to look at them again and ask, 'What have you done with your life?' " said Simpson, who said that as a youth he burned down an abandoned

federal building, destroyed property and fought with a police officer. "Maybe 90 percent of them you throw back in, but what about the other 10 percent?"

The cases are *Graham v. Florida* and *Sullivan v. Florida*.

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