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Life in Prison for Minors -- Cruel and Unusual?

By JESS BRAVIN

WASHINGTON -- In 1989, Joe Sullivan was convicted of breaking into a Pensacola, Fla., house, stealing jewelry and coins, and raping the 72-year-old woman who lived there.

Coming after 17 prior offenses that included assault, burglary and animal cruelty, a judge found that rehabilitation was hopeless. He sentenced Mr. Sullivan to life imprisonment, which in Florida carries no possibility of parole.

Mr. Sullivan was 13 years old. That fact alone makes the sentence unconstitutional, says Bryan Stevenson, executive director of the Equal Justice Initiative, a Montgomery, Ala., nonprofit that represents indigent defendants.

Florida Solicitor General Scott Makar says the state is entitled to authorize severe punishment for offenders who deserve it, regardless of age. "There is no consensus against life sentences for juveniles, particularly for heinous crimes such as sexual battery," his brief argues.

On Nov. 9, the two will make their arguments before the Supreme Court. In one of the central criminal-justice cases of the 2009-10 term, which began Monday, the high court for the first time will consider whether sentencing a juvenile offender to life without parole for a crime in which no one died violates the Eighth Amendment prohibition of "cruel and unusual punishments."

In a companion case the same day, the court also will weigh the fate of Terrance Graham, now serving life for armed burglary of a Jacksonville, Fla., barbecue restaurant at age 16.

Mr. Stevenson of the Equal Justice Initiative says "kids just change too much" in their teenage years to write them off forever. "What we are saying is that you cannot make that kind of a judgment about a juvenile."

Charles D. Stimson, a fellow at the conservative Heritage Foundation and former prosecutor who has been helping Mr. Makar prepare ahead of arguments, says "some acts are so heinous and show such a callous disregard for human life even if their actions don't result in death" that life without parole is appropriate.

The court's ruling, expected before July, will clarify the meaning of its last major juvenile justice case, *Roper v. Simmons*, which in 2005 held it unconstitutional to execute anyone for a crime committed as a juvenile. There, the court found that juveniles lack the "psychological maturity" to fully comprehend the gravity of wrongdoing that would justify death. "Even a heinous crime committed by a juvenile" might not reflect an "irretrievably depraved character," the court said.

Since the 1970s, the court has been narrowing the scope of the death penalty to those people considered most

reprehensible. When it comes to prison terms, however, the court rarely has intervened. Justice Anthony Kennedy often has cast the deciding vote, siding with liberal justices to limit the death penalty, but joining conservatives to uphold severe prison terms.

The court ordered separate arguments in the Sullivan and Graham cases, suggesting it could be inclined to distinguish the two based on their ages.

"The difference between 13 and 16 matters," says Frank Colucci, a professor at Purdue University Calumet in Hammond, Ind., and author of "Justice Kennedy's Jurisprudence," published in September. Prof. Colucci predicted Justice Kennedy will write an opinion in this case that will stress "the capacity of juveniles to be morally responsible for their crimes."

The court weighs evidence that a punishment is both cruel and unusual.

A July study by Florida State University's Public Interest Law Center estimated that nationwide, there were 111 inmates in seven states serving life-without-parole sentences for non-homicide crimes committed as juveniles. The overwhelming majority, 77, were in Florida prisons.

That suggests the sentence is unusual. But is it cruel?

"It's too cruel to be constitutional," says Republican former Sen. Alan Simpson of Wyoming, who joined six other former juvenile offenders in a friend of the court brief supporting Messrs. Sullivan and Graham. "For me, it was very important to have some second chances."

Mr. Simpson says he was "a monster" who repeatedly got into trouble with his pals, although his offenses -- torching an abandoned building, shooting up mailboxes and killing a cow -- don't approach those of Messrs. Sullivan and Graham.

The National District Attorneys Association, in a friend of the court brief, says that "life without parole for a juvenile may well be 'unusual'...but permanent incarceration for the most violent, hardened juvenile offenders is by no means 'cruel' -- especially by comparison to the harm such offenders could inflict on the public" if someday they could seek release on parole.

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