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14 and Life: Alabama Group Seeks to Overturn Sentences

By Anat Rubin
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LOS ANGELES - At only 14, Antonio Nunez was involved in a kidnapping that ended in a high-speed chase and shootout with Santa Ana police.

No one was injured, but Nunez was charged in April 2001 with aggravated kidnapping and other felonies.

When an Orange County jury convicted him, Nunez became the youngest person in the nation to be given a life sentence without the possibility of parole for a crime in which no one was harmed physically, his lawyers contend.

This month, attorneys from the Equal Justice Initiative of Alabama filed a habeas appeal in Nunez's case. His direct appeal was denied review by the California Supreme Court.

The initiative, which provides legal representation to indigent defendants, has mounted a campaign to identify and represent people serving life sentences without the possibility of parole for crimes they committed at 14 or younger.

Initiative director Bryan Stevenson has identified 80 such cases in the United States. Attorneys from his organization have filed appeals in eight of those cases and are investigating others in hope of filing appeals soon. Nunez's is the only California case in which Stevenson has filed an appeal.

"These are largely poor kids, kids of color, kids from communities where the residents are marginalized," Stevenson said. "For every one of these cases, there are countless others where the kids were tried as juveniles and released when they were 21. There are many identical cases with radically different outcomes."

The prosecutor in Nunez's case, Ebrahim Baytieh of the Orange County district attorney's office, stands by his decision to try Nunez as an adult. He agrees that there is a difference between an 18-year-old and a 14-year-old but says age should not be a factor when considering a life-without-parole sentence.

"Are we willing to take the risk of telling someone like Nunez, 'We know what you did, we know what you're capable of doing, but we're going to let you go?'" Baytieh said.

In nearly all of the cases Stevenson is investigating, the inmates have no legal representation. The constitutionality of their sentences, he says, never has been reviewed.

The Equal Justice Initiative's campaign to represent these prisoners began shortly after the U.S. Supreme Court, in March 2005, made it illegal for states to execute people for crimes committed when they were minors. *Roper v. Simmons*, 543 U.S. 551 (2005).

"I had to litigate to get young people off death row in Alabama even after *Roper v. Simmons* was decided," Stevenson said. "Then I got a letter from Ashley Jones, who was really excited to find that older kids in Alabama were going to be spared execution."

Jones, 21, was serving a life sentence without parole for a crime in which she was involved at 14. She wrote Stevenson to thank him for his work to force Alabama to comply with *Roper*.

"I get a lot of letters asking me for legal help, and it's very unusual to get a letter from someone who didn't have legal representation who was struck with a horrific sentence and who wasn't asking for anything," he said.

Stevenson began to correspond with Jones. He learned that she had been abused severely as a child. She grew up in crack houses with addicted parents and was assaulted by her father, threatened on several occasions at gunpoint by her mother and raped by her stepfather.

When she turned 14, Jones, depressed and suicidal, became involved with an older boy who was a gang member. He shot and killed Jones' grandfather and aunt and injured her grandmother and sister.

But Jones' age and history of abuse did not factor into her sentence. According to Stevenson, Alabama's sentencing laws did not recognize such mitigating factors.

"I became curious about whether hers was an unusual case," Stevenson said.

Nearly all 80 cases Stevenson identified involve trauma or abuse. Two-thirds of the prisoners are

people of color, and most of the cases involved a co-defendant who was much older and often more culpable.

"Child-development studies show there is a tendency for youths to commit crimes in groups and very often with adults," said Alison Parker, a senior researcher at Human Rights Watch and author of a recent study on juveniles sentenced to life without parole.

Nunez was given the same sentence as his co-defendant, who was 27 at the time of the crime. He was a first-time offender.

"There's a real perception that this sentence is reserved for the worst of the worst, and that's just not true," Parker said.

Nearly 60 percent of juveniles who received a sentence of life without parole were first-time offenders, Parker said.

Her study, published in 2005, identified 2,225 people serving lifetime prison sentences without possibility of parole in the United States for crimes committed before they turned 18. She could identify only 12 such cases outside the United States, in Israel, Kenya and Tanzania.

"It's a stark statement of how out of step the United States is with the rest of the world," said Elizabeth Calvin, a Los Angeles-based children's-rights activist for Human Rights Watch. "We have 99.5 percent of these cases here in this country."

California had 180 of these cases when the report was published. Last week, Calvin received new information from the state's Department of Corrections and Rehabilitation that put that number at 227.

"We are also the worst in the nation as far as racial disproportion," she said. "In California, black youth are sentenced to life without parole at 22 times the rate of white youths."

California is one of a handful of states considering reform on the issue. In February, state Sen. Leland Yee, D-San Francisco/San Mateo, a child psychologist, introduced a bill that would make the state's maximum sentence for juveniles 25 years to life.

The California Juvenile Life Without Parole Reform Act is set to come before the Senate Public Safety Committee on Tuesday. It is co-authored by state Sens. Gilbert Cedillo, D-Los Angeles, and Gloria Romero, D-Los Angeles.

Eleven states prohibit sentencing youths to life without parole, including Colorado (which recently enacted legislation), New York and Oregon.

Calvin believes that *Roper* has helped change attitudes toward juveniles in the justice system and could help change laws in other states.

"It represents a growing awareness that children and youths are not the same as adults," she said. "We know now that young people's brains are still developing. *Roper* is a part of this growing recognition that children should have second chances, that we shouldn't give up on children."

In *Roper*, the court took into consideration the international consensus against condemning children to die and held that the differences between juvenile and adult offenders "are too marked and well-understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability."

The court relied on evolving international norms and new social science showing that teenagers, whose brains are still developing according to scientific findings, lack maturity and responsibility, are more susceptible to outside pressures and are more likely to reform successfully.

"*Roper* represents an awareness that children are not the same as adults," Calvin said. "Clearly, other countries recognize that, and they understand that children have a special capacity to change."

The findings in *Roper* play a role in Nunez's appeal.

"Many of the things the Supreme Court said in that case could be applied to life without parole for someone who is 14," Stevenson said. "Can a just society really reconcile itself with the way in which these kids have been treated? I think most parents recognize how vulnerable their 13- and 14-year-olds are. I can't imagine they would believe their child, at 13 or 14, is so beyond repair, so beyond hope, that they have to spend the rest of their lives in prison."
