



Crime & Punishment

James Alan Fox on criminal behavior and the justice system

Juvenile LWOP unconstitutional except for murder

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The long-awaited and much-anticipated ruling from the U.S. Supreme Court related to the imposition of life sentences without parole eligibility for juveniles has followed the logic of earlier decisions on the death penalty. By a 5-4 margin, the High Court determined that life without parole was unconstitutional for juveniles convicted of crimes other than homicide.

The ruling invalidates laws in as many as 39 states (including New Hampshire and Rhode Island), the Federal Government and the District of Columbia that permitted repeat youthful offenders to receive life prison terms--in a sense "three strikes" statutes for "little-leaguers."

The Court's decision was issued for a Florida case (*Graham v. Florida*) in which a 16-year-old, with a prior record of offending, was sentenced to life without parole for a burglary conviction. Overall, the ruling will make eligible for parole at some juncture a total of 129 inmates nationwide, the majority of whom were, in fact, convicted in Florida.

The ruling does not affect the seven states, including Massachusetts, Connecticut and Vermont, that permit life without parole for juveniles only in the case of homicide. Nor does it impact the six states that do not use the penalty for any juvenile offenders.

There are those, myself included, who had hoped that the Court would have taken the further step of declaring life without parole unconstitutional for all juvenile offenses, including homicide. Wishful thinking! However, the basis for differentiating juveniles from adults, even for the most heinous of crimes, was clearly re-affirmed in today's majority opinion:

Roper established that because juveniles have lessened culpability they are less deserving of the most severe punishments. 543 U. S., at 569. As compared to adults, juveniles have

a ““lack of maturity and an underdeveloped sense of responsibility””; they “are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure”; and their characters are “not as well formed.” *Id.*, at 569–570. These salient characteristics mean that “[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Id.*, at 573. Accordingly, “juvenile offenders cannot with reliability be classified among the worst offenders.” *Id.*, at 569. A juvenile is not absolved of responsibility for his actions, but his transgression “is not as morally reprehensible as that of an adult.” *Thompson, supra*, at 835 (plurality opinion).

In some future term, perhaps, the Court will take on a challenge to sentencing juvenile murderers to life without parole. Hopefully, then it will decide, as it did in relation to capital punishment, that juveniles are just different from adults. Simply put, juveniles may look like adults, talk like adults, and even kill like adults--but they think like children.