

Terrance Jamar Graham v. State of Florida

Summary of Brief for Petitioner

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In *Roper v. Simmons*, 543 U.S. 551 (2005), this Court held that the characteristics of juvenile offenders, in particular their diminished culpability and capacity for change, rendered the death penalty unconstitutional as applied to offenders who committed their offenses before the age of 18 years old, even though the death penalty is otherwise constitutional when applied to adult offenders. These same considerations require that a life-without-parole sentence imposed on a juvenile offender for a non-homicide is unconstitutional.

The Eighth Amendment prohibits grossly disproportionate sentences of imprisonment. Under its well-settled precedent, this Court considers the sentence's underlying penological purposes and legislative judgments; the harshness of the sentence compared to the gravity of the offense; and a comparison of the sentencing laws and practices of the States and the international community. No single factor is dispositive.

The argument that "death is different" does not alter this analysis or cabin *Roper* to capital cases. In both capital and non-capital cases, the Court also has examined the offender's characteristics to determine whether a sentence is grossly disproportionate. In *Rummel v. Estelle*, 445 U.S. 263, 276 (1980), and *Ewing v. California*, 538 U.S. 11 (2003), the Court explained that an otherwise grossly disproportionate sentence can nonetheless be constitutionally permissible under the Eighth Amendment if the offender is a recidivist.

Like the death penalty, a life-without-parole sentence rejects rehabilitation and is an irrevocable sentence with regard to the many years lost while incarcerated. And for a non-homicide, juvenile offense, life without parole is a severe punishment. Granted, the Court has cited "death is different" as a basis to mandate more stringent procedures for death-penalty sentencing, including an examination of the offender's potentially mitigating characteristics on a case-by-case basis. But those requirements are unrelated to the Court's proportionality analysis. Petitioner does not claim any constitutional right to a similar, individualized sentencing procedure. Indeed, *Roper* rejected the notion that a juvenile offender's future characteristics as an adult could be accurately determined on a contemporaneous, individualized basis at sentencing.

A. Graham's sentence is grossly disproportionate when viewed through the prism of his status as a juvenile offender. *Roper* concluded that juveniles are less culpable than

adults for their criminal conduct, primarily because of three basic differences between juveniles and adults. First, juveniles possess less maturity and an underdeveloped sense of responsibility, which often results in impetuous and ill-considered actions and decisions. Second, juveniles are more vulnerable and susceptible to negative influences and outside pressures, including peer pressure. Third, the personality and character traits of juveniles are less well-formed and more transitory. These uncontested common-sense distinctions between juveniles and adults have been confirmed by the undisputed scientific evidence and ratified in the laws of the several States by the numerous age-based legislative classifications for voting, marriage, and other adult activities. *Roper* and the scientific data confirm that the irresponsible conduct of juveniles is morally less reprehensible than the same conduct by adults.

B. The underdeveloped personality characteristics of juveniles relied upon in *Roper* render imprisoning juvenile offenders for life without parole for non-homicide offenses unjustifiable. The lesser culpability of juveniles undermines the State's goal of retribution in imposing a sentence of life without parole. And the State's goal of deterrence is not accomplished by imprisoning juveniles to a life sentence without the possibility of parole because, as the Court in *Roper* acknowledged and scientific research has proven, the threat of adult punishment does not deter misconduct by juveniles. Finally, life without parole rejects rehabilitation and embraces incapacitation. As the *Roper* Court noted, juveniles are more malleable and capable of reform than adults; it is cruel to simply "give up" on them.

C. This case confirms the inherent difficulties in sentencing a juvenile to life without parole, and the judgment of the court below at sentencing directly contradicts *Roper*'s rationale. The court concluded that Graham—who at age 16 committed the only crimes for which he has ever been convicted—was incapable of *ever* being rehabilitated or deterred from committing more offenses. But this Court in *Roper* explicitly concluded that a sentencer could not reliably predict a juvenile's potential for rehabilitation and deterrence. Not even "expert psychologists [can] differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Roper*, 543 U.S. at 573.

Nor is Graham's life-without-parole sentence the result of any legislative judgment. In *Solem v. Helm*, 463 U.S. 277 (1983), this Court invalidated a life-without-parole sentence in part because the legislature there did not *mandate* such a sentence but rather merely *permitted* it. Subsequently, in upholding a life-without-parole sentence *mandated* by the legislature, Justice Kennedy distinguished *Solem* by explaining that it repudiated the "judgment of a single jurist," not the judgment of a legislature. *Harmelin v. Michigan*, 501 U.S. 957, 1006 (1991) (Kennedy, J., concurring in part and concurring in judgment). In this case, the Florida Legislature has not mandated that a juvenile be sentenced to life without parole for committing an armed burglary.

D. The unconstitutionality of Graham's sentence is confirmed by the fact that he is one of a handful of juveniles, in *any* State, who has been sentenced to life without parole for a non-homicide offense such as armed burglary. A comparative analysis is required because, as a threshold matter, Graham's sentence is the same as the harshest sentence that a juvenile could receive for murder, and thus is disproportionate in light of the less serious nature of Graham's offense, an armed burglary which did not involve the taking of a life or an attempt to take life. Indeed, the harshest adult punishment (death) would not be constitutional for any similar offense committed by an adult offender. *Enmund v. Florida*, 458 U.S. 782, 787, 801 (1982); *Kennedy v. Louisiana*, 128 S. Ct. 2641, 2645-2648, 2660 (2008).

Graham's sentence is significantly greater than the average sentences for *all* offenders (adult and juvenile) convicted in Florida of violent crimes (8.5 times greater) or armed burglaries (7.1 times greater). Though Graham's armed burglary conviction is comparable to the offenses of thousands of juvenile offenders, Florida has sentenced only 77 juvenile offenders to life without parole for a mere non-homicide offense.

More significantly, compared to the rest of the Nation, Florida stands virtually alone. Florida leads the Nation in imprisoning juveniles for non-homicide offenses. Outside of Florida, there is *no* juvenile, non-homicide offender serving a life-without-parole sentence for a burglary offense, and only one other State even permits such a sentence for a first-time armed burglary offender such as Graham. Looking at all non-homicides, there are only 29 juvenile, non-homicide offenders serving life without parole outside of Florida, and they are concentrated in five other States. This means that Florida incarcerates approximately 70% of the Nation's juvenile, non-homicide offenders. Finally, the international community has overwhelmingly rejected and condemned the practice of imprisoning juveniles for life without parole.

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