

Supreme Court Grapples With Constitutionality of Juvenile Sentences

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The U.S. Supreme Court appeared divided on Monday over whether states violate the Constitution by imposing a sentence of life without parole on juveniles who commit nonhomicide offenses.

The justices heard arguments in two separate cases from Florida in which lawyers for Terrance Graham, who committed his crime at age 17, and for Joe Sullivan, who was 13 when convicted, argued that the sentences are cruel and unusual punishment under the Eighth Amendment.

"The sentence is unequivocal and cruel because it rejects any hope that the adolescent can change," said Graham's counsel, Bryan Gowdy of Mills Creed & Gowdy in Jacksonville, Fla., in *Graham v. Florida*.

Gowdy urged the justices to announce a per se rule that juveniles under the age of 18 cannot be sentenced to life in prison without parole. In the second argument, *Sullivan v. Florida*, Bryan Stevenson of the Equal Justice Initiative in Montgomery, Ala., sought to draw the line at age 14, but said he fully supported Gowdy's line as well.

Both lawyers relied heavily on the analysis in the Supreme Court's 2005 *Roper v. Simmons* decision striking down the death penalty for juvenile murderers. The majority in that case found that juveniles younger than 18 lacked the maturity and moral culpability of adults.

But Florida Solicitor General Scott Makar told the justices that "death is different." He warned that a "categorical rule" eliminating life in prison without parole would undermine Florida law. The state, he said, had enacted strong punishments for juvenile crimes in response to a serious problem. He also noted that many states have eliminated parole in their criminal justice systems.

"A categorical rule goes against the national trend and consensus," said Makar.

Several justices clearly had trouble with attempting to pinpoint at what age the punishment would violate the



Constitution and at what point a juvenile sentenced to life in prison would become eligible for parole review.

"What makes us more culpable after our 18th birthday?" Justice Sonia Sotomayor asked Gowdy.

"A line has to be drawn somewhere," responded Gowdy, adding that 18 is the age supported by social science studies of juvenile behavior and maturity.

Justice Samuel Alito Jr. told Gowdy, "You're making a per se argument that no matter how horrific the crimes, no matter if no remorse is shown, that person must be made eligible for parole?"

Gowdy said yes. "Life with parole gives some hope that later in time he may be released." Alito asked when parole must be considered if the high court were to ban the life without parole sentence. Gowdy said that should be left to the states.

Chief Justice John Roberts Jr. repeatedly pressed lawyers for the juveniles and the state on whether a better solution would be to declare that the Eighth Amendment required judges to consider the youth's age in sentencing and then whether the sentence was "proportional" for an offender of that age and for the particular crime.

"Why doesn't that seem more sensible?" asked Roberts. "It avoids all of the line-drawing."

But neither the lawyers for Graham and Sullivan nor for the state agreed with Roberts.

Stevenson said proportionality review has not worked well in cases involving children. Gowdy said a judgment cannot be made at sentencing whether a juvenile can be rehabilitated. That judgment must be made later, he said.

Florida's Makar argued that judges now consider the offender's youth in imposing life without parole. "Age does matter," he said.

The justices spent considerable time on a procedural problem in the Sullivan case that could result in them not reaching the merits.

Stevenson urged them to reach the merits. "If you accept that Florida has adopted life in prison without parole for a child of 13, then you also have to accept that they have adopted it for a child of six," he said.

There are 111 inmates serving sentences of life without parole who committed their nonhomicide crimes when they were younger than 18, of which 77 are in Florida prisons. There are 73 13- or 14-year-old inmates serving such sentences, according to Stevenson.

A decision is expected by the end of June.