

In The Supreme Court of the United States

Graham

Petitioner,

V.

Florida

Respondent.

On Writ of Certiorari to the District Court
of Appeal, First District of Florida

BRIEF FOR THE RESPONDENT

Corey Benson

Brian Zurosky

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Question Presented

Is the sentencing of a minor to life in prison without parole cruel and unusual under the 8th amendment?

Statement of the Case

In 2003, Terrance Graham plotted and stormed into a Jacksonville restaurant, attacking the manager with a steel bar that nearly killed him. He was charged with assault and battery along with attempted, a charge that carries up to life in prison, but was only sentenced to 12 months plus 3 years probation. Upon release in 2004, Graham returned to a life of crime when he led older accomplices in the planning of an armed robbery Carlos Rodriguez Lopez's house. Lopez is a Columbian war refugee. On December 2nd of that year, Graham and his accomplices broke into Lopez's house and began forcing him to the floor demanding money. For half an hour, the gang 'destroyed everything' in the house before locking him in the closet and piling furniture in front of the door and leaving. During a second robbery attempt later, his accomplice was shot, forcing Graham to drive him and the other accomplice to the hospital. Graham sped off from the alleged location and fled from police and detectives, which developed into a high-speed pursuit with Graham achieving speeds in excess of 90 miles per hour in residential areas. He lost control and crashed. In his car were three handguns: a .38 revolver, .45 caliber semiautomatic and a .380 automatic.

Summary of the Argument

I. The ruling *Roper v. Simmons* cannot be held to the same connections as this particular case.

A. The prohibition of the death penalty for minors does not allow for the removal of harsh punishment of minors.

II. Graham's sentence is not grossly disproportionate.

B. Supreme Court cases in which there were life sentences for violent and not violent crimes whose lower court decisions were upheld.

a. *Harmelin v. Michigan*

III. Grahams' increasingly violent behavior a month before his 18th birthday and his second chance at probation.

A. Even though Graham was first brought to trial when he was only 17 years old for a crime that he was committed when he was 16 years old. Graham deserves an adult punishment; on the account, that he was given his second chance and he later violated his probation. The crime committed that violated his probation was dramatically more violent than the crime he first committed when he was 16 years old. The increase in violence of the crimes committed clearly poses a threat to whoever comes in contact with Graham after his release from prison.

Argument

I. The ruling *Roper v. Simmons* cannot be held to the same connections as this particular case.

Roper v. Simmons dealt strictly with the death penalty. There is nothing *essentially* like the death penalty, including life spent in prison. Life in prison is not taking an individual's life away from them. The death penalty is described as the sentence of execution for murder and other capital crimes. Sentencing Graham to life in prison is not *essentially* giving him to death penalty because the court was not sentencing him to be executed. The decision to give the death penalty to minors does not fall under the *Roper v. Simmons* decision because it does not automatically make harsh penalties for minors unconstitutional.

II. Graham's sentence is not grossly disproportionate.

A. In *Lockyer v. Andrade*, the court followed a "narrow proportionality" school of thought that states that the incarceration must be 'grossly disproportionate' to the crime. *Harmelin v. Michigan* determined that a life sentence without parole for the possession of 672 grams (no pun intended) of cocaine was not an 8th amendment violation.

I. The court will see that Graham's sentence for multiple violent crimes is not grossly disproportionate when compared to *Harmelin v. Michigan*. If the non

violent act of drug possession was found to warrant life in prison, then Graham's sentence for violent acts of armed robbery, battery, and resisting arrest are not grossly disproportionate.

B. The definition of what is 'grossly disproportionate' was also determined in *Solem v. Helm*, here a life sentence for a \$100 bad check was found to be in violation of the 8th amendment.

I. Between these two cases, the court's narrow interpretation proves that for there to be a violation of the 8th amendment, there must be an extremely long prison sentence for what is essentially minor social misconduct. However, Graham committed serious violent crimes.

III. Grahams' increasingly violent behavior a month before his 18th birthday and his second chance at probation.

A. He has committed two serious offenses and has agreed to be tried as an adult to both of them. These crimes carry the punishment of life in prison without parole. Graham has no serious interest in rehabilitation and demonstrated acts of violence of not decreasing, but increasing seriousness.

Conclusion

The court will see that the previous rulings in the Florida Court System are consistent with rulings and standards set by this court. That Graham's punishment for violent crimes is just and not grossly disproportionate. Removing such punishments for minors may give them the idea of immunity within the legal system. Giving any minor the life in prison sentence for a crime that would result in the death penalty for an adult is not the same principle.

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