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PUNISHING JUVENILES: IS LIFE WITHOUT PAROLE TOO CRUEL?

by AMY McCARTHY

Stacey T. was only 14 years old when he robbed a drug dealer.¹ He was neither aware that his co-conspirators would murder the dealer nor was he present during the murder itself.² Nonetheless, Stacey T. will now spend the rest of his natural life in prison without the possibility of parole.³ Stacey T.'s situation begs the question: Is life without parole cruel and unusual punishment for juveniles?

Currently, nearly 2,500 prisoners in the United States are serving life without parole sentences for crimes committed while they were minors.⁴ No other country in the world has this sentence.⁵

In 2005, the Supreme Court held in *Roper v. Simmons* that imposing the death penalty on juveniles is unconstitutional.⁶ Since then, the Court's reasoning has become the cornerstone of the movement to abolish life without parole for juvenile offenders.⁷ In the coming months, the Supreme Court will decide whether the imposition of a life without the possibility of parole sentence for juveniles, who were convicted of non-homicidal offenses, violates the Eighth Amendment of the U.S. Constitution.⁸

PROSECUTING JUVENILES AS ADULTS

It is both constitutional and permissible for juveniles to be tried as adults in state or federal criminal proceedings in the United States.⁹ In Illinois, for example, there are five specific crimes that automatically transfer an individual from juvenile to adult status for adjudication purposes.¹⁰ These specific crimes are first degree murder, aggravated sexual assault, aggravated battery committed with a firearm, armed robbery committed with a firearm and aggravated car hijacking committed with a firearm.¹¹ The severity of the crime, not the age of the accused, is what mandates trial and punishment as an adult.¹²

Similar to Illinois, 27 states have made a life without parole sentence mandatory if the juvenile is convicted of certain crimes.¹³ Additionally, 42 states permit juveniles to be sentenced to life without parole.¹⁴

There was a dramatic increase of heinous crimes committed by minors in the mid-1980s. Professor John Dilulio, Jr. of Princeton University coined the term "juvenile super-predators" in describing this group.¹⁵ In his 1995 article, *The Coming of the Super-Predators*, Dilulio warned the public that "on the horizon . . . are tens of thousands of severely morally impoverished juvenile super-predators."¹⁶ According to Thomas Maroney, Supervising Attorney at the Office of the Cook County Public Defender, however, "the number of heinous crimes committed by minors is declining."¹⁷

Because the fear invoked by this "juvenile super-predators" phase is diminishing, Maroney's biggest concern with prosecuting juveniles as adults is that these juveniles are then subject to adult sentences.¹⁸ Others disagree with Maroney's sentiments. Maggie Elvey, whose husband was beaten to death by two minors, states that "[i]f they can do these kinds of crimes, then they have got to face the punishment."¹⁹

SHOULD JUVENILES BE TREATED DIFFERENTLY THAN ADULTS?

In *Roper*, the Supreme Court held that minors lack a sense of maturity.²⁰ Given this lack of maturity, the Supreme Court concluded that minors are less culpable than adults.²¹ According to Justice Kennedy who delivered the majority opinion of the Court, “juveniles have a greater claim than adults to be forgiven.”²² Because juveniles are developing their identities, their reckless conduct and behavior can subside with age and experience.²³ Yet, the Supreme Court has also held that it “cannot deny or overlook the brutal crimes too many juvenile offenders have committed.”²⁴

According to research studies conducted by the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, minors typically do not possess the social skills to exercise self-control and make mature decisions.²⁵ Various studies also conclude that juveniles are more concerned with short-term implications rather than long-term consequences.²⁶ Furthermore, the research findings suggest that juveniles are big risk-takers and are more vulnerable to peer pressure than adults.²⁷

Neuroscientists urge that there are biological distinctions that explain why teenagers make irrational decisions.²⁸ In the words of Stacey T., “out of naïveté, out of influence, out of the ignorance of knowing the consequences, [I] agreed to do a crime.”²⁹

Non-profit organizations also support prohibition of life without parole for juveniles.³⁰ As expressed by Amnesty International and Human Rights Watch, the main concern raised by life without parole is that it extinguishes any type of rehabilitation of a minor.³¹ The organizations fear that “by sentencing children to life without parole, society tells them unequivocally that their lives are worthless.”³² Since they have no expectancy of being released, juveniles serving natural life sentences are at the “bottom of the list” in terms of receiving education or vocational training.³³

The *Roper* Court also finds this outcome disconcerting.³⁴ Compared to adults, a “greater possibility exists that a minor’s character deficiencies will be reformed,” stated the *Roper* Court.³⁵ Thus, the Court posited that rehabilitation is a more appropriate form of punishment for minors.³⁶ Although life without parole does not promote rehabilitation, there are three other goals of punish-

ment that are recognized under the law that may justify a life without parole sentence: retribution, deterrence, and incapacitation.³⁷

In addition to the Supreme Court and non-governmental organizations, state legislatures also recognize that minors lack a level of maturity.³⁸ This recognition is exactly why states have enacted age restrictions on many activities, such as driving, drinking, voting, smoking and gambling.³⁹ Ironically, as the Supreme Court noted in *Thompson v. Oklahoma*, juveniles are not old enough to serve on juries; yet, they are old enough to stand trial as adults.⁴⁰

On the other hand, many individuals believe that sentencing minors to life without parole is completely within constitutional limits.⁴¹ They argue that the fact that nearly every state permits this sentence demonstrates its constitutionality.⁴² Shannon Goessling, an attorney who represents 33 victims' rights groups, believes that "this system is not set up for rehabilitation. It is set up for retribution and consequences."⁴³ According to Goessling, it is an injustice to victims if these juvenile defendants are released after they commit such heinous crimes.⁴⁴

There are many legally, socially and medically recognized arguments on why minors are inherently different than adults. The main issue, however, is whether minors should be treated differently than adults in the eyes of the law. Stacey T. and the rest of the world wait in anticipation for the Supreme Court to resolve this issue in terms of life imprisonment without the possibility of parole.

NOTES

1 AMNESTY INT'L & HUMAN RIGHTS WATCH, THE REST OF THEIR LIVES: LIFE WITHOUT PAROLE FOR CHILD OFFENDERS IN THE UNITED STATES, 29 (2005), available at <http://www.amnestyusa.org/us/clwop/report.pdf>.

2 *Id.* at 30.

3 *Id.*

4 *Id.* at 1.

5 HUMAN RIGHTS WATCH, EXECUTIVE SUMMARY: THE REST OF THEIR LIVES, 1 (2008), available at <http://www.hrw.org/en/reports/2008/05/01/executive-summary-rest-their-lives>.

6 *Roper v. Simmons*, 543 U.S. 551, 579 (2005).

7 David Milne, *Youth Advocates Fight to End Life-Without-Parole Sentences*, PSYCHIATRIC NEWS, Sept. 15, 2006, at 10.

- 8 *Graham v. Florida*, 129 S.Ct. 2157, 2157 (2009) (*granting certiorari*); *Sullivan v. Florida*, 129 S.Ct. 2157, 2157 (2009) (*granting certiorari*).
- 9 AMNESTY INT’L & HUMAN RIGHTS WATCH, *supra* note 1, at 17.
- 10 705 ILL. COMP. STAT. 405/5-130 (2006).
- 11 *Id.*
- 12 *Id.*
- 13 AMNESTY INT’L & HUMAN RIGHTS WATCH, *supra* note 1, at 25.
- 14 *Id.*
- 15 John J. Dilulio, Jr., *The Coming of the Super-Predators*, WEEKLY STANDARD, Nov. 27, 1995, at 23.
- 16 *Id.*
- 17 Interview with Thomas Maroney, Attorney Supervisor, Office of Cook County Public Defenders, in Chi., Ill. (Mar. 3, 2010).
- 18 *Id.*
- 19 Adam Geller, *Hard Time: Law Jails Some Kids for Life*, USA TODAY, Dec. 8, 2007.
- 20 *Roper*, 543 U.S. at 570.
- 21 *Id.*
- 22 *Id.*
- 23 *Id.*
- 24 *Id.* at 572.
- 25 MACARTHUR FOUNDATION RESEARCH NETWORK, ISSUE BRIEF 3: LESS GUILTY BY REASON OF ADOLESCENCE, 2 (2010), *available at* http://www.adjj.org/downloads/6093issue_brief_3.pdf.
- 26 *Id.*
- 27 *Id.*
- 28 AMNESTY INT’L & HUMAN RIGHTS WATCH, *supra* note 1, at 48.
- 29 *Id.* at 30.
- 30 *Id.* at 6.
- 31 *Id.* at 82.
- 32 *Id.*
- 33 *Id.* at 70.
- 34 *Roper*, 543 U.S. at 570.
- 35 *Id.*
- 36 *Id.*
- 37 *Harmelin v. Michigan*, 501 U.S. 957, 999 (1991).
- 38 *Thompson v. Oklahoma*, 487 U.S. 815, 824 (1988).
- 39 *Id.*
- 40 *Id.*
- 41 AMNESTY INT’L & HUMAN RIGHTS WATCH, *supra* note 1, at 89.
- 42 *Id.*
- 43 Nina Totenberg, *High Court Weighs Life Terms for Minors*, NPR NEWS, Nov. 9, 2009.
- 44 *Id.*