

April 29, 2013

Is 100 Years a Life Sentence? Opinions Are Divided

By ADAM LIPTAK

WASHINGTON — If people who are too young to vote commit crimes short of murder, the Supreme Court said in 2010, they should not be sentenced to die in prison.

That sounds straightforward enough. But there are two ways to understand the decision, [Graham v. Florida](#).

One is formal. The court may have meant only to bar sentences labeled “life without parole.” On that understanding, judges remained free to impose very long sentences — 100 years, say — as long as they were for a fixed term rather than for life.

That is how Justice Samuel A. Alito Jr., in dissent, urged lower-court judges to interpret the decision. “Nothing in the court’s opinion affects the imposition of a sentence to a term of years without the possibility of parole,” he wrote.

The other way to understand the decision is practical. If the Eighth Amendment’s prohibition of cruel and unusual punishment requires that young offenders be left with a glimmer of hope that they may someday be released, it should not matter whether they were sentenced to life in so many words or as a matter of rudimentary actuarial math.

The lower courts are split on how to interpret the Graham decision, and the Supreme Court seems to be in no hurry to answer the question. Last week, the justices turned away an appeal from Chaz Bunch of Ohio, who was convicted of kidnapping and raping a woman in a carjacking when he was 16. He was sentenced to 89 years. Even assuming he becomes eligible for early release, he will be 95 years old before he can leave prison.

The United States Court of Appeals for the Sixth Circuit, in Cincinnati, [upheld the sentence](#), even as it acknowledged that there were two ways to approach the matter.

“Some courts have held that such a sentence is a de facto life without parole sentence and therefore violates the spirit, if not the letter, of Graham,” Judge John M. Rogers wrote for a unanimous three-judge panel. “Other courts, however, have rejected the de facto life sentence argument, holding that Graham only applies to juvenile non-homicide offenders expressly sentenced to ‘life without parole.’ ”

Until the Supreme Court speaks, Judge Rogers wrote, there is no “clearly established federal law” to assist Mr. Bunch, who was challenging his state conviction in federal court.

Applying the reasoning of the Graham decision to long fixed sentences, Judge Rogers added, “would lead to a lot of questions.” An appeals court in Florida last year listed some of them in [upholding a 76-year sentence](#) meted out to Leighdon Henry, who was 16 when he committed rape.

“At what number of years would the Eighth Amendment become implicated in the sentencing of a juvenile: 20, 30, 40, 50, some lesser or greater number?” Judge Jacqueline R. Griffin wrote for the court.

Mr. Henry is black and was born in 1989. The life expectancy of black males born that year was 64, [according to the Centers for Disease Control and Prevention](#). Life expectancy in prison is shorter than it is outside.

Wherever the line is, then, a 76-year sentence would seem to be past it.

“Could the number vary from offender to offender based on race, gender, socioeconomic class or other criteria?” Judge Griffin asked.

That is a reasonable question. But Bryan Stevenson, the executive director of the [Equal Justice Initiative](#) in Montgomery, Ala., said it was the wrong one. “The idea isn’t to get the person as close to death as possible before you deal with the possibility of their release,” he said. It is, rather, to give juvenile offenders a sporting chance, perhaps after decades in prison, to make the case that they deserve to get out, he said.

Those pleas might well be rejected, Justice Anthony M. Kennedy wrote for the majority in the Graham decision. But there ought to be, he said, “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.”

So far, we have been talking about crimes that did not involve killings. Last year, in [Miller v. Alabama](#), the Supreme Court struck down laws that required mandatory sentences of life without parole for juvenile offenders convicted of homicide. Judges remain free to mete out such sentences, but state laws cannot require them to do so. Judges must instead take account of the defendant’s age in the mix of sentencing factors.

By international standards, the American approach to juvenile justice is an oddity. “There is no other country in which a person is serving a life-without-parole sentence for a crime committed before the age of 18,” said Alison Parker, the director of United States programs for [Human Rights Watch](#).

Before the Miller decision, there were about 2,500 juvenile offenders serving sentences of life without parole. The current number is hard to nail down, but it is presumably dropping.

On Thursday, for instance, the Arkansas Supreme Court [ordered a new sentencing hearing](#) for Kuntrell Jackson, who had received a mandatory life sentence for his involvement in a murder when he was 14. What was called for after the Miller decision, the court said, was “a discretionary sentencing range of not less than 10 years and not more than 40 years, or life.”

The number of juvenile offenders serving de facto life terms because of very long sentences is probably in the hundreds. Some of the appeals court judges who have upheld such sentences did not sound enthusiastic about the task.

“Without any tools to work with, however, we can only apply Graham as it is written,” Judge Griffin wrote. “If the Supreme Court has more in mind, it will have to say what that is.”