THOMPSON v. OKLAHOMA

HOW OLD IS TOO YOUNG TO DIE?
DEATH PENALTY FOR JUVENILES IS LIMITED

SUMMARY

By a 5-3 vote, the Supreme Court has decided that, under current statutes, persons who are under 16 at the time they committed an offense may not be executed as a punishment for that offense. (Justice Kennedy did not participate in the case.)

BACKGROUND

Two constitutional provisions govern the law concerning capital punishment. The Eighth Amendment bars the imposition of "cruel and unusual" punishments. The Fourteenth Amendment requires states to give persons subject to the death penalty "due process of law." In 1972 in the landmark case of *Furman v. Georgia*, the Supreme Court held that due process required that juries not be allowed complete discretion in deciding which person should be executed. Instead, the Court said that the death penalty could only be imposed if juries found that specific aggravating factors existed and that no sufficient mitigating factors existed. Aggravating factors are likely to cause imposition of a more severe penalty or sentence, while mitigating factors are likely to result in a less harsh penalty or sentence. Some justices, notably Justices Brennan and Marshall, have long argued that the death penalty always violates the Eighth Amendment. However, a majority of the Court has never supported that position.

Since 1972, the Court has decided a number of issues involving capital punishment. It has limited the types of offenses for which it can be imposed and ruled that insane persons cannot be executed. In late June, 1988, the Court decided *Thompson v. Oklahoma*, its first decision on the execution of juveniles. The *Thompson* decision does not put the matter to rest, though, and further litigation can be expected.

CONSTITUTIONAL PROVISIONS

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The relevant portion of the Fourteenth Amendment says a state may not "deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

FACTS

William Thompson was 15 years old in 1983 when he and three older persons attacked and brutally murdered his former brother-in-law. He was charged with first-degree murder, tried and convicted. An Oklahoma statute allowed juveniles to be tried as adults under certain circumstances (most, if not all, states have such statutes). A separate statute provided that adults convicted of murder could be sentenced to death, if the jury made certain findings. Among these findings was one that the murder was especially cruel. The jury in Thompson's case made such a finding and imposed the death penalty on Thompson (in many states juries are allowed to set the sentence in serious cases; in others the jury may make a recommendation to the judge; in still others the jury plays no role in setting the sentence).

Thompson appealed both his conviction, claiming that the jury was prejudiced by being shown some gruesome photographs of the victim, and his sentence, claiming that the death penalty ought not to be imposed on someone who was so young at the time of the offense. The state courts in Oklahoma upheld both the conviction and the sentence. The Supreme Court of the United States agreed to hear his appeal on both issues. By a 5-3 vote, the Court overturned the sentence and sent the case back to state courts for resentencing.

ANALYSIS

There were three opinions in the *Thompson* decision. Four justices (Stevens, Brennan, Marshall, and Blackmun) agreed with Thompson's argument that the execution of juveniles constitutes cruel and unusual punishment. Three justices (Scalia, Rehnquist, and White) argued that it was not cruel and unusual punishment, and that if the state had a right to try a juvenile as an adult, it had the right to punish him as an adult. Justice O'Connor agreed that Thompson should not be executed, but she did not agree with the logic of the other four justices. Because Justice O'Connor was the fifth vote necessary for the decision, only her opinion has any real weight.

The four justices who believed that the execution of juveniles constituted cruel and unusual punishment relied heavily on statistics and the practices of other states and countries. First, they found that in almost every state, the rights of 15 year olds are severely restricted. They cannot generally drive, marry, drink, or vote, for example. As to capital punishment itself, they noted that 14 states do not permit it, 19 permit it without mentioning any age, and the remainder permit it but set 16 as the minimum age. They also noted that capital punishment of juveniles is not permitted in most, if not all, western nations, including the Soviet Union.

From these data, the justices concluded that there was a consensus in society against executing juveniles. That consensus, plus the view in the law that juveniles are less responsible for their actions than adults, led the justices to conclude that the juvenile death penalty violated the Eighth Amendment.

Justice O'Connor noted that Oklahoma had passed one statute permitting juveniles to be tried and punished as adults. But in a separate action, many years apart, the Oklahoma legislature had passed the death penalty provision under which Thompson was sentenced, which contained no mention of age limitations. She concluded from this that it was unclear whether or not the Oklahoma legislature had understood that it was effectively authorizing the execution of juveniles. Given that this was unclear and given that the punishment involved was death, she felt that the penalty should not be permitted. A clear implication of her opinion is that if a state were to specifically authorize the execution of juveniles, Justice O'Connor would vote to support it. If Justice Kennedy, who joined the Court too late to participate in this case, were to support juvenile executions, then there would be a 5-4 majority supporting the death penalty in a case like this one.

The three justices in dissent disputed the idea that society had rejected juvenile executions. Their view was that while 18 states had rejected juvenile executions specifically, 19 states with death penalty statutes had not done so. They accused the majority of legislating rather than judging.

EXCERPTS FROM THE MAJORITY OPINION (Justice Stevens was the author.)

"The authors of the Eighth Amendment drafted a categorical prohibition against the infliction of cruel and unusual punishment, but they made no attempt to define the contours of that category. They delegated that task to future generations of judges who have been guided by the evolving standards of decency that mark the progress of a maturing society."

"Inexperience, less education, and less intelligence makes the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult."

"In short, we are not persuaded that the imposition of the death penalty (for juveniles) . . . can be expected to make any meaningful contribution to the goals that capital punishment is intended to achieve. It is, therefore, nothing more than the purposeless and needless imposition of pain and suffering."

EXCERPTS FROM JUSTICE O'CONNOR'S OPINION

"The history of the death penalty instructs that there is danger in inferring a settled society consensus from statistics like those relied on in this case."

"In this unique situation, I am prepared to conclude that petitioner and others who were below the age of 16 at the time of their offense may not be executed under the authority of a capital punishment statute that specifies no minimum age at which the commission of the capital crime can lead to the offender's execution."

EXCERPTS FROM THE DISSENTING OPINION (Written by Justice Scalia.)

"The question posed here . . . is whether there is a national consensus that no criminal so much as one day under 16, after consideration of his circumstances, including the overcoming of the presumption that he should not be tried as an adult, can possibly be deemed mature and responsible enough to be punished with death for any crime. Because there seems to me no plausible basis for answering the question in the affirmative, I respectfully dissent."

"If 15 year olds must be explicitly named in capital statutes, why not those of extremely low intelligence, or those over 75, or any number of other appealing groups as to which the existence of a national consensus regarding capital punishment may be in doubt."