

Justices Agree to Take Up Sentencing for Young Offenders

By ADAM LIPTAK

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WASHINGTON — The Supreme Court agreed on Monday to consider whether the reasoning that led it to strike down the death penalty for juvenile offenders four years ago should also apply to sentences of life without the possibility of parole.

The court accepted two cases on the issue, both from Florida and neither involving a killing. In one, Joe Sullivan was sentenced to life without the possibility of release for raping a 72-year-old woman in 1989, when he was 13. In the other, Terrance Graham received the same sentence for participating in a home invasion robbery in 2004, when he was 17 and on probation for other crimes.

In the majority opinion in the death penalty case, *Roper v. Simmons*, Justice Anthony M. Kennedy wrote that teenagers were immature, unformed, irresponsible and susceptible to negative influences, including peer pressure.

“Even a heinous crime committed by a juvenile,” Justice Kennedy concluded, is not “evidence of irretrievably depraved character.”

Outside the context of the death penalty, however, the Supreme Court has not shown much interest in cases from prisoners claiming that the sentences they received were too harsh. But Douglas A. Berman, an authority on sentencing law at Ohio State University, said the factors cited by Justice Kennedy concerning juveniles might well apply in noncapital cases.

“The principles driving *Roper*,” Professor Berman said, “would seem to suggest that its impact does not stop at the execution chamber.”

The United States is alone in the world in making routine use of life-without-parole sentences for juvenile offenders. Human rights groups say more than 2,000 prisoners in the United States are serving such sentences for crimes they committed when they were 17 or younger. A vast majority of those crimes involved a killing by the defendant or an accomplice.

At the argument of the *Roper* case in 2004, Justice Antonin Scalia said the rationales offered against the juvenile death penalty applied just as forcefully to sentences of life without the possibility of parole.

“I don’t see where there’s a logical line,” said Justice Scalia, who voted in dissent to retain the juvenile death penalty.

But Justice Kennedy wrote that life sentences would continue to deter young criminals after the death penalty became unavailable.

“The punishment of life imprisonment without the possibility of parole,” Justice Kennedy wrote, “is itself a severe sanction, in particular for a young person.”

Lawyers for the two Florida inmates cited international law, including the United Nations Convention on the Rights of the Child, which prohibits sentences of life without parole for juveniles. Justice Kennedy’s invoking foreign and international law in the *Roper* decision was controversial, and the new cases will reopen the question of how much attention the Supreme Court should pay to international law.

Bryan S. Gowdy, a lawyer for Mr. Graham, said in an interview that his client had never been convicted of the robbery that sent him to prison for the rest of his life. Though evidence was presented concerning the robbery,

the trial judge found only that Mr. Graham had violated the terms of his probation after an earlier conviction for armed burglary and attempted armed robbery when he was 16.

“When our children make mistakes, are we going to lock them up and throw away the key for life?” Mr. **Gowdy** said. “If you follow the rationale of Roper, that’s not appropriate.”

In rejecting a challenge to Mr. Graham’s sentence last year, a Florida appeals court acknowledged that “a true life sentence is typically reserved for juveniles guilty of more heinous crimes such as homicide.” But the court added that Mr. Graham “rejected his second chance” in violating the terms of his probation “and chose to continue committing crimes at an escalating pace.”

A ruling in favor of the prisoners in the two cases — Graham v. Florida, No. 08-7412, and Sullivan v. Florida, No. 08-7621 — could be quite narrow. The Supreme Court may leave for another day, for instance, the question of how murders committed by juveniles may be punished.

Last year, drawing a similar distinction, the court said in Kennedy v. Louisiana that crimes against individuals that do not involve killing, including the rape of a child by an adult, cannot be punished by death.