

## Supreme Court Weighs Life Sentences For Juveniles

by Nina Totenberg  
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Retribution versus the possibility of redemption were at the core of Supreme Court arguments Monday in two cases testing whether it is unconstitutionally cruel and unusual punishment to sentence a juvenile to life in prison without parole — for a crime that does not involve a death.

Florida leads the nation in sentencing juveniles to life in prison without parole for non-homicide crimes. Nationally, of 111 such cases, 77 are in the Sunshine State.

So it is fitting that the cases both came from Florida. One involves a 13-year-old convicted of rape; the other, a 16-year-old convicted of armed robbery.

Glenn Paul/Equal Justice Initiative

Joe Sullivan, pictured at Columbia Correctional Institution in Lake City, Fla., in 2007, is serving a life sentence for a crime he committed when he was 13 years old. The Supreme Court is weighing whether that is cruel and unusual punishment under the Constitution.



### The Cases

Bryan Stevenson represents Joe Sullivan, now 33, who was convicted of rape at age 13.

"To say to any child of 13 that you're only fit to die in prison is cruel, and we believe that the Constitution prohibits that kind of punishment," he says.

On the steps of the Supreme Court Monday, Stevenson said his client was convicted primarily with the testimony of two older accomplices who got very light sentences. Stevenson suggested that Sullivan is the classic case of a kid too young, too poor and too intellectually impaired to be able to fight for his claim of innocence. Indeed, Sullivan's court-appointed lawyer filed no appeals and was later disbarred. By the time Stevenson's Equal Justice Initiative began examining Sullivan's case, nearly two decades after his conviction, the state had destroyed all the physical evidence, and no DNA tests could be conducted that might have proved definitively whether Sullivan had committed the crime.

Monday's second case involved Terrance Graham, who at 16 participated in a robbery during which an accomplice hit the store manager with a pipe. Graham's probation for that crime was revoked when he was arrested fleeing the scene of another armed robbery — and this time he was sent away for life.

His lawyer [Bryan Gowdy](#) argues that a life term for such an offense doesn't fit the crime.

"Terrance did not take a life, yet his sentence was the same as the harshest sentence for the most heinous murder," **Gowdy** says.

But Florida Solicitor General Scott Makar defended the penalty in both cases.

"We have [had] a serious crime problem in Florida over the years, so in our view that justifies the stiff penalties that have been assessed," he said.

### Juvenile Advocate Bryan Gowdy

Inside the courtroom, it wasn't the usual assemblage of lawyers and tourists in the gallery. Retired Justice Sandra Day O'Connor slipped into the seats immediately to the side of the bench to watch as her former colleagues; her replacement, Justice Samuel Alito; and Obama appointee Sonia Sotomayor listened to the arguments. O'Connor, during her 24 years on the court, was often a pivotal vote on issues involving children and the criminal justice system.

Monday's argument focused on the Supreme Court's 2005 decision striking down the death penalty for juveniles. The 5-to-4 ruling, written by Justice Anthony Kennedy, stressed that juveniles are less culpable because of their immaturity, but it also noted that death is different from other punishments.

Juvenile advocate **Gowdy** contended that, like the death penalty, life in prison without the possibility of parole "cruelly ignores the difference between adolescents and adults."

Justice Ruth Bader Ginsburg asked if he was drawing the line at homicide.

"Yes," **Gowdy** said. "Society has said that murder is different."

Alito: "Are you saying that no matter what a person does, commits the most horrible series of non-homicide offenses that you can imagine, a whole series of brutal rapes, assault that renders the victim a paraplegic, but not dead, no matter what ... the person at some point must be made eligible for parole?"

**Gowdy** maintained that while a juvenile may be held in prison for life, to deny him a chance at rehabilitation and parole would be to deny him any hope.

Kennedy, who may be the critical vote in this case, asked: "Why does a juvenile have a constitutional right to hope, but an adult does not?"

"Because the juvenile is less culpable," replied **Gowdy**, "and over time will change and may reform."

Chief Justice John Roberts seemed to advocate a middle ground.

"Instead of drawing a bright line at age 18, wouldn't it make more sense to require states to consider age as a factor?" he said. "So that if you do have a case where it's the 17-year-old who is one week shy of his 18th birthday, and it is the most grievous crime spree you can imagine," the court can determine that life without parole might be appropriate.

"Adolescents are different in that we can't tell at this age whether they are going to reform or not," **Gowdy** answered.

Justice Antonin Scalia raised a verbal eyebrow at this point. "Doesn't your argument ignore the fact that one of the purposes of this punishment is retribution?"

"We concede that the state has the right to exact retribution," said **Gowdy**. "But here, even the prosecutor only recommended 30 years."

Sotomayor interjected, "What's the difference between a month before 18 and a month after?"

"There isn't much difference," **Gowdy** conceded. "But you have to draw the line somewhere, and as this court recognized in striking down the death penalty for juveniles, society has generally drawn the line at 18 as the age of maturity when individuals are considered old enough to vote, to drive and to marry."

### **Defense Lawyer Bryan Stevenson**

Next up on the juvenile side of the argument was defense lawyer Bryan Stevenson, who contended that while drawing the line at 18 is preferable, drawing it at 14 is imperative.

Roberts observed that while the death penalty is reserved for the worst of the worst, life without parole is not reserved for the worst of the worst.

Lawyer Stevenson replied, "We think that with regard to non-homicides, life without parole occupies the same end-of-the-line status that the death penalty does with homicide."

Defending life in prison without parole in both cases Monday was Florida Solicitor General Makar. He argued that the court should not do anything to contradict what he called the national trend for tougher juvenile sentences and abolition of parole.

Roberts: "You're arguing for a categorical rule of your own that age should not be considered in sentencing."

Kennedy: "What is the state's interest in keeping the defendant in custody for the rest of his life if he has been rehabilitated at some point and there's no longer a real danger?"

Roberts wondered, "Which of these cases is worse?"

After some hemming and hawing, the state's lawyer said the rape was worse than the armed robbery.

Sotomayor then pointed to statistics showing that nationally, the median sentence for rape is 10 years. In light of that, she wondered why this rape by a 13-year-old justifies life in prison without parole.

Justice Stephen Breyer seemed to sum up the court's dilemma: "As a general matter, human beings are uncertain about how much moral responsibility to assign to individuals in a particular category. Is it appropriate to sentence someone to life in prison without parole at the age of 10? No. 11? No. 17? Yeah, maybe. We are in an area of ambiguity, what justifies taking a person's whole life away."

The justices themselves seemed divided and uncertain on the question.