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CASE COMMENT

APPLYING THE NARROW PROPORTIONALITY PRINCIPLE TO JUVENILE OFFENDERS:

Graham v. Florida, 130 S. Ct. 2011 (2010)

*Daniel Cardenal**

I. FACTS

The defendant, a juvenile,¹ pled guilty to armed burglary with assault or battery² and attempted armed-robbery.³ Accepting the plea,⁴ the court sentenced him to probation for three years.⁵ Shortly after sentencing, the defendant violated his probation by committing two home invasion robberies and fleeing from the police.⁶ The court sentenced him to the statutory maximum: life sentence with no possibility of parole.⁷ The defendant challenged the sentence as a violation of the Eighth Amendment.⁸ Upon denial, the defendant appealed to Florida's First District Court of Appeal which affirmed the decision,⁹ and the Florida Supreme Court denied certiorari.¹⁰ On appeal, the Supreme Court of the United States held that "for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole."¹¹

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1. *Graham v. Florida*, 130 S. Ct. 2011, 2018 (2010) (exercising its discretion under Fla. Stat. § 985.227(1)(b) (2003) (subsequently renumbered at § 985.557(1)(b) (2007)), the prosecution chose to charge Graham as an adult which automatically triggered the maximum potential penalties of life imprisonment without parole and fifteen years imprisonment, respectively).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* at 2018-19.

7. *Id.* at 2020 (At sentencing, the trial court reviewed various recommendations: the Florida Department of Corrections recommended four years imprisonment, the State recommended thirty years on the burglary count and fifteen years on the attempted armed robbery count, and the defendant's counsel asked for five years). *Id.* at 2019.

8. *Id.* at 2020.

9. *Id.*

10. *Id.*

11. *Id.* at 2030.

II. HISTORY

The Court has long recognized that in interpreting the Eighth Amendment's prohibition of cruel and unusual punishment courts must appreciate "the evolving standards of decency."¹² In *Furman v. Georgia*, the Court clarified this by explaining that while "[t]he standard itself remains the same . . . its applicability must change as the basic mores of society change."¹³ Additionally, the Court has held that because "proportionality is central to the Eighth Amendment"¹⁴ the punishment for crimes should be graduated to the offense.¹⁵ The Court has traditionally used two distinct approaches to determine the proportionality of a sentence to the offense committed.¹⁶

The first approach is the totality of the circumstances test. In *Harmelin v. Michigan*, the Court articulated that the "narrow proportionality principle" is implicit in the application of the Eighth Amendment.¹⁷ The Court explained that this principle "does not require strict proportionality between crime and sentence" but instead bars "extreme sentences that are 'grossly disproportionate' to the crime."¹⁸

Harmelin provides a two step analysis for "determining whether a sentence for a term of years is grossly disproportionate for a particular defendant's crime."¹⁹ The analysis begins by examining the seriousness of the crime and the harshness of the sentence.²⁰ The next logical step is to examine the defendant's sentence with others in the same jurisdiction as well as the punishments imposed on those who committed the same crime in other jurisdictions.²¹ If by comparison the defendant's sentence seems to be an aberration then the sentence is cruel and unusual.²²

The second approach used in determining the proportionality of a sentence is by reviewing and analogizing to "certain categorical

12. *Trop v. Dulles*, 356 U.S. 86, 100-01 (1958) (demonstrating that while the State has the power to punish it has the responsibility to keep the punishments "within the limits of civilized standards.").

13. *Furman v. Georgia*, 408 U.S. 238, 382 (1972) (finding that society's standards define what cruel is for a given generation).

14. *Graham*, 130 S. Ct. at 2021.

15. *Weems v. United States*, 217 U.S. 349, 367 (1902).

16. *Graham*, 130 S. Ct. at 2021.

17. *Harmelin v. Michigan*, 501 U.S. 957, 997 (1991) (Kennedy, J. concurring). The defendant challenged the sentencing statute as cruel and unusual because the mandatory life in prison without parole was disproportionate to the drug related offense. *Id.* at 961-62. The Court held that mandatory severe penalties are not necessarily cruel and affirmed the Michigan court's decision. *Id.* at 995-96.

18. *Id.* 1001 (citing *Solem v. Helm*, 463 U.S. 277, 284 (1983)).

19. *Graham*, 130 S. Ct. at 2022.

20. *Harmelin*, 501 U.S. at 1005 (Kennedy, J. concurring).

21. *Id.*

22. *Id.*

restrictions on the death penalty.”²³ These categorical rules can be divided into two types: those that focus on the offense and those that focus on the offender.²⁴ Regarding the former, in *Kennedy v. Louisiana* the Court held that an individual convicted of a nonhomicide crime against another cannot be sentenced to death.²⁵

The Court has developed two key categorical rules regarding the defendant. In *Roper v. Simmons*, the Court prohibited capital punishment for juvenile offenders.²⁶ Meanwhile, in *Atkins v. Virginia*, the Court prohibited this sentence for those with diminished mental capacity.²⁷

Each rule was developed by first examining the “objective indicia of society’s standards, as expressed in legislative enactments and state practice” to determine the nation’s attitude toward the sentence.²⁸ Once determined, the Court, guided by precedent and its own understanding,²⁹ should evaluate the constitutionality of the punishment.³⁰

In *Roper*, a juvenile burglarized and murdered a neighborhood woman³¹ and on the jury’s recommendation, the trial court sentenced him to death.³² The Court affirmed the decision to set aside the judgment because it found a national consensus supporting the belief that juveniles were less culpable than adults.³³ The Court found three general differences between juveniles and adults that justified their lower level of culpability.³⁴ First, juveniles lack maturity and have an underdeveloped sense of responsibility.³⁵ Second, juveniles are more “susceptible to negative influences and outside pressures, including peer pressure.”³⁶ Finally, the character and disposition of a juvenile is more fluid and “not as well formed as an adult.”³⁷

In *Atkins*, a defendant with diminished mental capacity was

23. *Graham*, 130 S. Ct. at 2021.

24. *Id.* at 2022.

25. *Kennedy v. Louisiana*, 554 U.S. 407, 421 (2008). The Court held that despite the horrific nature of the crime, a death sentence for one who rapes but did not kill nor intend to assist in the killing of the child is unconstitutional. *Id.* at 2651.

26. *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

27. *Atkins v. Virginia*, 536 U.S. 304, 321 (2002).

28. *Roper*, 543 U.S. at 572.

29. *Kennedy*, 554 U.S. at 421.

30. *See Roper*, 543 U.S. at 572.

31. *Id.* at 557.

32. *Id.* at 558.

33. *Id.* at 564.

34. *Id.* at 569.

35. *Id.* (citing *Johnson v. Texas*, 509 U.S. 350, 367 (1993)).

36. *Id.* (citing *Eddings v. Okla.*, 455 U.S. 104, 115 (1982)).

37. *Id.* at 570 (citing E. ERIKSON, *IDENTITY: YOUTH AND CRISIS* (1968)).

convicted of capital murder and sentenced to death.³⁸ The Court reversed the decision finding a growing national consensus against a death sentence for those with diminished mental capacity due to their lower level of culpability.³⁹ The Court found that their diminished mental capacity lessened their culpability because, among other issues, they have trouble controlling their impulses.⁴⁰

III. INSTANT CASE

In *Graham v. Florida*, the Court crafted a new categorical rule stating that the Eighth Amendment prohibited a juvenile convicted of a nonhomicide offense from being sentenced to life imprisonment without possibility of parole.⁴¹ The Court reasoned that because the “case implicate[d] a particular type of sentence as it applie[d] to an entire class of offenders” the categorical approach was the more appropriate method of analysis.⁴²

The categorical approach required the Court to begin by examining legislation across jurisdictions to determine the national consensus regarding this practice.⁴³ Despite finding that thirty-seven states and the District of Columbia permitted this practice, it believed that actual sentencing practices would be a better indicator of the national consensus.⁴⁴ From this, the Court concluded that there was a consensus against the practice because, of the thirty eight jurisdictions that permit this sentence only eleven impose the sentence and do so quite rarely.⁴⁵ *Kennedy* dictates that the next step is for the Court to examine its Eighth Amendment precedent and determine the constitutionality of the sentence.⁴⁶

In *Atkins*, the Court prohibited capital punishment for those with diminished mental capacity because of their lower level of culpability due to a lack of impulse control.⁴⁷ The *Roper* Court held that juveniles could not be sentenced to death since they are less mature, less responsible, and more easily influenced, resulting in a lowered level of

38. *Atkins v. Virginia*, 536 U.S. 304, 307-10 (2002).

39. *Id.* at 313-21.

40. *Id.* at 318. The Court concluded that those with diminished mental capacity had difficulty understanding and processing information and communicating their thoughts and ideas to others.

41. *Graham*, 130 S. Ct. at 2034.

42. *Id.* at 2022-23.

43. *Id.* at 2023.

44. *Id.*

45. *Id.* at 2024.

46. *Kennedy*, 554 U.S. at 421.

47. *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

culpability.⁴⁸ Therefore, in conjunction with the *Kennedy* rule, prohibiting capital punishment for nonhomicide offenses against an individual, the Court reached the natural conclusion that since juveniles are less culpable, they do not deserve the most severe of non-capital punishments.⁴⁹

The Court continued by examining the traditional justifications for punishment,⁵⁰ concluding that none were sufficient justification for this sentence.⁵¹ Retribution could not be used to justify such severe a sentence because it is directly related to culpability. Therefore, if juveniles are less culpable then the most severe punishment cannot be proportional.⁵² Likewise, deterrence is premised on the belief that one evaluates the consequences of one's actions, but because juveniles lack maturity they would not do so, rendering the deterrence effect impotent.⁵³

Incapacitation is insufficient because it requires the court to "make a judgment that the juvenile is incorrigible,"⁵⁴ a conclusion that runs directly counter to the *Roper* Court's observations.⁵⁵ Finally, rehabilitation could not be used to justify the sentence because, by its very nature, the sentence forswears the rehabilitative ideal.⁵⁶

Reasoning that the two alternatives, legislation and case-specific, were inadequate,⁵⁷ the Court concluded that a categorical rule was needed here, even though they "tend to be imperfect."⁵⁸ The Court reasoned that any legislation drafted by the State would not take sufficient account of the juvenile's age and that "[n]othing in [the State's] laws prevents its courts from sentencing a juvenile nonhomicide offender to life without parole based on a subjective judgment that the defendant's crimes demonstrate an 'irretrievably depraved character.'"⁵⁹

The Court rejected the case-specific analysis, believing that trial courts would have difficulty in setting aside the brutality of certain

48. The *Graham* court also noted that no recent studies have provided any data that would give cause to reconsider the Court's observations in *Roper* regarding the lowered culpability of juveniles. *Graham*, 130 S. Ct. at 2027-30.

49. *Id.* at 2027-30.

50. *Id.* 2028-30. The four traditional goals of punishment are retribution, deterrence, incapacitation, and rehabilitation (citing *Ewing v. California*, 538 U.S. 11, 25 (2003)).

51. *Id.*

52. *Id.* at 2028 (citing *Roper*, 543 U.S. at 571).

53. *Id.* at 2028-29 (citing *Johnson*, 509 U.S. at 367). This issue is compounded by the fact that because the sentence is so rarely imposed, even more mature and responsible juveniles will not be aware of the possibility and therefore not consider it. *Id.* at 2029.

54. *Id.* at 2029.

55. *Roper v. Simmons*, 543 U.S. 569-70 (2005).

56. *Graham*, 130 S. Ct. at 2029-30.

57. *Id.* at 2030-33.

58. *Id.* at 2030.

59. *Id.* at 2031 (citing *Roper*, 543 U.S. at 572).

crimes and allow it to overpower the juvenile's age as a mitigating factor.⁶⁰ The Court also expressed concern for the special difficulties that arise when representing a juvenile.⁶¹

IV. ANALYSIS

Even though the *Graham* majority reached the correct decision, it did so by following the wrong analytical method. The proper method would have been to follow the totality of circumstances approach favored in Chief Justice Roberts's concurrence, which emphasizes the narrow proportionality principle articulated in *Harmelin*⁶² and lower culpability rule for juveniles established in *Roper*.⁶³

The narrow proportionality principle emphasizes that a defendant's sentence cannot be "grossly disproportionate" to the offense committed.⁶⁴ The concurring opinion recognizes that the Court has "not established a clear or consistent path for courts to follow"⁶⁵ and suggests that review should begin by "comparing 'the gravity of the offense and the harshness of the penalty.'"⁶⁶ This comparison naturally invites the trial court to evaluate the defendant's mental state, motive, actual harm caused, and any prior criminal history.⁶⁷ If this comparison suggests a gross disproportionality, then a jurisdictional analysis should be done to confirm.⁶⁸ The trial court should also factor in the *Roper* analysis regarding a juvenile's lowered culpability.⁶⁹ Though both the majority and concurring opinions use the *Roper* rule, the latter emphasizes that juveniles generally cannot "be classified amongst the worst offenders."⁷⁰

The totality approach here would acknowledge the seriousness of the *Graham*'s crimes, but realize that they are not the worst nonhomicide crimes and therefore do not deserve such a severe sentence.⁷¹ It would also account for *Graham*'s status as a juvenile when the crimes were

60. *Id.* at 2032.

61. *Id.* (Specifically, the Court found that a juvenile's natural mistrust of adults and limited understanding of the justice system means that a juvenile is unlikely to work well with his or her counsel).

62. *Id.* at 2036-37 (Roberts C.J., concurring).

63. *Id.*

64. *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991) (Kennedy, J., concurring).

65. *Graham*, 130 S. Ct. at 2037 (citing *Lockyer v. Andrade*, 538 U.S. 63, 72 (2003)).

66. *Id.* (citing *Solem v. Helm*, 463 U.S. 277, 290-91 (1983)).

67. *Id.*

68. *Id.*

69. *See supra* text accompanying notes 26, 33-37.

70. *Roper v. Simmons*, 543 U.S. 569 (2005).

71. *Graham*, 130 S. Ct. at 2039-40.

committed and the natural qualities, propensity for recklessness and increased susceptibility to peer pressure, of that condition.⁷² This alone creates a “strong inference” that the sentence was “grossly disproportionate.”⁷³

Armed with this inference, the trial court should seek confirmation by performing a jurisdictional analysis. The sentence was “far more severe than that imposed for similar violations” even when adults were convicted.⁷⁴ In fact, the sentence was even “more severe than the average sentence imposed on those convicted of murder or manslaughter.”⁷⁵ These facts validate the initial inference that the sentence was unconstitutional.

The majority decision is overbroad and restricts a State’s citizens from imposing their own values; particularly regarding more heinous crimes.⁷⁶ More importantly, the majority’s reasoning is flawed because it focuses on the wrong part of the issue.⁷⁷ By continuing to allow a juvenile to be sentenced to life without parole for a homicide conviction, the trial court shows that there is nothing inherently wrong with life without parole for juveniles.⁷⁸ Instead, “the constitutionality of such sentences depends on the particular crimes” committed.⁷⁹ If that is the case then the Court has overstepped its bounds and should not have considered “other hypothetical crimes not presented by this case.”⁸⁰

The majority does not address this issue and instead defends its categorical rule by arguing that courts will be unable to accurately distinguish which juveniles can be rehabilitated and which cannot.⁸¹ However, courts are frequently called upon to make difficult determinations and more importantly, the system depends on “judges applying their reasoned judgment to each case that comes before them.”⁸²

72. See *supra* text accompanying note 68.

73. *Graham*, 130 S. Ct. at 2040.

74. *Id.*

75. *Id.* at 2041 (citing Florida Dept. of Corrections, Annual Report FY 2007-2008).

76. See *id.* at 2041 (Roberts, C.J., concurring) (Chief Justice Roberts highlights two tragic cases where life without parole would seem to be particularly appropriate but would be unavailable to the jury and the trial court because of the new categorical rule created by the majority).

77. *Id.*

78. *Id.*

79. *Id.* at 2041.

80. *Id.*

81. *Id.* at 2032.

82. *Id.* at 2042.

V. CONCLUSION

The Court's attempt to serve justice in this case resulted in an overbroad rule that further serves to weaken judicial discretion in sentencing. Chief Justice Roberts reasoned that by completely prohibiting judges from sentencing juveniles to life without the meaningful opportunity for parole, regardless of the crime they have committed, the Court runs the risk of being unable to punish those juvenile offenders who truly deserve the most severe punishment.⁸³ Finally, the Court's new categorical rule is flawed because by not completely banning the sentence, the decision implicitly states that there are times when it is an appropriate punishment. Because the sentence is not inherently a violation of the prohibition against cruel and unusual punishments, the decision of its applicability should be left to the competent jurists of our criminal system.

83. *Id.* at 2041.