SOLEM v. HELM

SUPREME COURT OF THE UNITED STATES
463 U.S. 277
June 28, 1983
[5 - 4]

OPINION: JUSTICE POWELL...[Does] the Eighth Amendment [forbid] a life sentence without possibility of parole for a seventh nonviolent felony?

By 1975 the State of South Dakota had convicted respondent Jerry Helm of six nonviolent felonies. In 1964, 1966, and 1969 Helm was convicted of third-degree burglary. In 1972 he was convicted of obtaining money under false pretenses. In 1973 he was convicted of grand larceny. And in 1975 he was convicted of third-offense driving while intoxicated. The record contains no details about the circumstances of any of these offenses, except that they were all nonviolent, none was a crime against a person, and alcohol was a contributing factor in each case.

In 1979 Helm was charged with [and pled guilty to] uttering a "no account" check for $100...The governing statute provides...:

> "Any person who...with intent to defraud, passes a check drawn on a financial institution knowing at the time of such passing that he...does not have an account with such financial institution, is guilty of a Class 5 felony."

Ordinarily the maximum punishment for uttering a "no account" check would have been five years' imprisonment in the state penitentiary and a $5,000 fine. As a result of his criminal record, however, Helm was subject to South Dakota's **recidivist statute**:

> "When a defendant has been convicted of **at least three prior convictions** in addition to the principal felony, the sentence for the principal felony shall be enhanced to the sentence for a Class 1 felony."

The maximum penalty for a "Class 1 felony" was life imprisonment in the state penitentiary and a $25,000 fine. Moreover, South Dakota law explicitly provides that **parole is unavailable**...The Governor is authorized to pardon prisoners, or to commute their sentences, but no other relief from sentence is available even to a rehabilitated prisoner.

...**The South Dakota Circuit Court sentenced Helm to life imprisonment under [the recidivist statute]**...The court explained:

> "I think you certainly earned this sentence and certainly proven that you're an habitual criminal and the record would indicate that you're beyond rehabilitation and that the only prudent thing to do is to lock you up for the rest of your natural life, so you won't have further victims of your crimes, just be coming back before Courts. You'll have plenty of time to think this one over."

The South Dakota Supreme Court...affirmed the sentence...

In November 1981, Helm sought habeas relief in the United States District Court for the District of South Dakota. Helm argued, among other things, that his sentence constituted cruel and unusual punishment under the Eighth and Fourteenth Amendments. Although the District Court recognized that the sentence was harsh, it concluded that this Court's recent decision in *Rummel v. Estelle* was dispositive. It therefore denied the writ.

The United States Court of Appeals reversed [and] noted that *Rummel* v. *Estelle* was distinguishable. Helm's sentence of <u>life without parole</u> was qualitatively different from Rummel's <u>life sentence with the prospect of parole</u> because South Dakota has rejected rehabilitation as a goal of the criminal justice system. The Court of Appeals...concluded...that Helm's sentence was "grossly disproportionate to the nature of the offense." It therefore directed the District Court to issue the writ unless the State resentenced Helm. We granted certiorari [and] now affirm.

Chip...kaboom...chip, chip...

The Eighth Amendment...prohibits not only barbaric punishments, but also sentences that are disproportionate to the crime committed.

There is no basis for the State's assertion that the general principle of proportionality does not apply to felony prison sentences. The constitutional language itself suggests no exception for imprisonment. We have recognized that the Eighth Amendment imposes "parallel limitations" on bail, fines, and other punishments, *Ingraham v. Wright*, and the text is explicit that bail and fines

may not be excessive. It would be anomalous indeed if the lesser punishment of a fine and the greater punishment of death were both subject to proportionality analysis, but the intermediate punishment of imprisonment were not. There is also no historical support for such an exception...

In sum, we hold as a matter of principle that a criminal sentence must be proportionate to the crime for which the defendant has been convicted. Reviewing courts, of course, should grant **substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes**, as well as to the discretion that trial courts possess in sentencing convicted criminals. But **no penalty is *per se* constitutional**. As the Court noted in *Robinson v. California*[1], a single day in prison may be unconstitutional in some circumstances...

Substantial deference to the broad authority possessed by legislatures? The Court has come very close to being the primary source for determining "how to punish" criminals.

A court's proportionality analysis under the Eighth Amendment should be guided by objective criteria, including (i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions...

There are other accepted principles that courts may apply in measuring the harm caused or threatened to the victim or society. The absolute magnitude of the crime may be relevant. Stealing a million dollars is viewed as more serious than stealing a hundred dollars -- a point recognized in statutes distinguishing petty theft from grand theft. Few would dispute that a lesser included offense should not be punished more severely than the greater offense. Thus a court is justified in viewing assault with intent to murder as more serious than simple assault. It also is generally recognized that attempts are less serious than completed crimes...

Indeed. Perhaps we would have significantly less crime if "attempts" were considered to be "as serious" as completed crimes. The only difference I can see in the degree of moral culpability is that the murderer is a better shot. Of course, in my estimation that is a policy (legislative) issue, not a constitutional one.

Turning to the culpability of the offender, there are again clear distinctions that courts may recognize and apply. In *Enmund*[2] the Court looked at the petitioner's lack of intent to kill in determining that he was less culpable than his accomplices. Most would agree that negligent conduct is less serious than intentional conduct. South Dakota, for example, ranks criminal acts in ascending order of seriousness as follows: negligent acts, reckless acts, knowing acts, intentional acts, and malicious

[1]Case 8A-CUP-6 on this website.

[2]Case 8A-CUP-15 on this website.

acts. A court, of course, is entitled to look at a defendant's motive in committing a crime. Thus a murder may be viewed as more serious when committed pursuant to a contract...

Helm's crime was "one of the most passive felonies a person could commit." It involved neither violence nor threat of violence to any person. The $100 face value of Helm's "no account" check was not trivial, but neither was it...large...One hundred dollars was less than half the amount South Dakota required for a felonious theft. It is easy to see why such a crime is viewed by society as among the less serious offenses.

Helm, of course, was not charged simply with uttering a "no account" check, but also with being a **HABITUAL** offender. And **a State is justified in punishing a recidivist more severely than it punishes a first offender**. Helm's status, however, cannot be considered in the abstract. His prior offenses, although classified as felonies, were all relatively minor. All were nonviolent and none was a crime against a person. Indeed, there was no minimum amount in either the burglary or the false pretenses statutes and the minimum amount covered by the grand larceny statute was fairly small.

One may well understand the "fairness" in this outcome; however, how "bad" would Helm have needed to be before this Court would approve of the judgment of the majority of the citizens of South Dakota? How is that line in the sand defined? Where does the Constitution draw it?

Helm's present sentence is life imprisonment without possibility of parole. Barring executive clemency, Helm will spend the rest of his life in the state penitentiary. This sentence is far more severe than the life sentence we considered in *Rummel* v. *Estelle*. Rummel was likely to have been eligible for parole within 12 years of his initial confinement, a fact on which the Court relied heavily. Helm's sentence is the most severe punishment that the State could have imposed on any criminal for any crime. Only capital punishment, a penalty not authorized in South Dakota when Helm was sentenced, exceeds it.

We next consider the sentences that could be imposed on other criminals in the same jurisdiction. When Helm was sentenced, a South Dakota court was required to impose a life sentence for murder and was authorized to impose a life sentence for treason, first-degree manslaughter, first-degree arson and kidnaping. No other crime was punishable so severely on the first offense. Attempted murder, placing an explosive device on an aircraft, and first-degree rape were only Class 2 felonies. Aggravated riot was only a Class 3 felony. Distribution of heroin and aggravated assault were only Class 4 felonies.

Helm's habitual offender status complicates our analysis, but relevant comparisons are still possible. Under §22-7-7, the penalty for a second or third felony is increased by one class. Thus a life sentence was mandatory when a second or third conviction was for treason, first-degree man-slaughter, first-degree arson, or kidnaping, and a life sentence would have been authorized when a second or third conviction was for such crimes as attempted murder, placing an explosive device on an aircraft, or

first-degree rape. Finally, [the statute under which] Helm was sentenced authorized life imprisonment after three prior convictions, regardless of the crimes.

In sum, there were a handful of crimes that were necessarily punished by life imprisonment: murder, and, on a second or third offense, treason, first-degree manslaughter, first-degree arson, and kidnaping. There was a larger group for which life imprisonment was authorized in the discretion of the sentencing judge, including: treason, first-degree manslaughter, first-degree arson, and kidnaping; attempted murder, placing an explosive device on an aircraft, and first-degree rape on a second or third offense; and any felony after three prior offenses. Finally, there was a large group of very serious offenses for which life imprisonment was not authorized, including a third offense of heroin dealing or aggravated assault.

As I read Justice Powell's comparisons and follow his logic, I picture the days and/or weeks of testimony from experts, etc., before various State committees prior to the vote by the Senate and House of South Dakota followed by the Governor's blessing before this statute became law. I am in full agreement with Justice John Marshall. The Supreme Court does and should have the power to strike state laws as unconstitutional. But, it seems to me that the balance necessary for our form of government to survive requires far more real "deference to legislation" and judicial restraint than these Eighth Amendment cases observe. Otherwise, what is left of the doctrine of "separation of powers"?

Criminals committing any of these offenses ordinarily would be thought more deserving of punishment than one uttering a "no account" check -- even when the bad-check writer had already committed **six <u>minor</u> felonies**.

I realize Justice Powell is speaking in relative terms; however, I just cannot bring myself to use the phrase "<u>minor</u> **felonies**" in the same sentence as the word **"SIX"!** Oops! I did it.

Moreover, there is no indication in the record that any habitual offender other than Helm has ever been given the maximum sentence on the basis of comparable crimes. It is more likely that the possibility of life imprisonment under §22-7-8 generally is reserved for criminals such as fourth-time heroin dealers, while habitual bad-check writers receive more lenient treatment. In any event, Helm has been treated in the same manner as, or more severely than, criminals who have committed far more serious crimes.

Finally, we compare the sentences imposed for commission of the same crime in other jurisdictions. The Court of Appeals found that "Helm could have received a life sentence without parole for his offense in only one other state, Nevada," and we have no reason to doubt this finding. At the very least, therefore, it is clear that Helm could not have received such a severe sentence in 48 of the 50 States. But even under Nevada law, a life sentence without possibility of parole is merely authorized in these circumstances. We are not advised that any defendant such as Helm, whose prior offenses

were so minor, actually has received the maximum penalty in Nevada. It appears that Helm was treated more severely than he would have been in any other State.

The State argues that the present case is essentially the same as *Rummel* v. *Estelle*, for the possibility of parole in that case is matched by the possibility of executive clemency here...We conclude, however, that the South Dakota commutation system is fundamentally different from the parole system that was before us in *Rummel*...Parole is a regular part of the rehabilitative process. Assuming good behavior, it is the normal expectation in the vast majority of cases. The law generally specifies when a prisoner will be eligible to be considered for parole, and details the standards and procedures applicable at that time...Thus it is possible to predict, at least to some extent, when parole might be granted. Commutation, on the other hand, is an ad hoc exercise of executive clemency. A Governor may commute a sentence at any time for any reason without reference to any standards...

The Texas and South Dakota systems in particular are very different. In *Rummel*, the Court did not rely simply on the existence of some system of parole. Rather it looked to the provisions of the system presented, including the fact that Texas had "a relatively liberal policy of granting 'good time' credits to its prisoners, a policy that historically has allowed a prisoner serving a life sentence to become eligible for parole in as little as 12 years."...

In South Dakota commutation is more difficult to obtain than parole...Helm would have to serve three-fourths of his revised sentence [in Texas] before he would be eligible for parole and the provision for good-time credits is less generous [in South Dakota]...

The Constitution requires us to examine Helm's sentence to determine if it is proportionate to his crime...We conclude that his sentence is significantly disproportionate to his crime, and is therefore prohibited by the Eighth Amendment. The judgment of the Court of Appeals is accordingly Affirmed.

DISSENT: CHIEF JUSTICE BURGER/WHITE/REHNQUIST/O'CONNOR...The...law governing this case is crystal clear, but today the Court blithely discards any concept of *stare decisis*, **trespasses gravely on the authority of the states**, and distorts the concept of proportionality of punishment by tearing it from its moorings in capital cases. Only three Terms ago, we held in *Rummel v. Estelle* that a life sentence imposed after only a *third* nonviolent felony conviction did not constitute cruel and unusual punishment under the Eighth Amendment. Today, the Court ignores its recent precedent and holds that a life sentence imposed after a *seventh* felony conviction constitutes cruel and unusual punishment under the Eighth Amendment. Moreover, I reject the fiction that all Helm's crimes were innocuous or nonviolent. Among his felonies were three burglaries and a third conviction for drunken driving. By comparison Rummel was a relatively "model citizen." Although today's holding cannot rationally be reconciled with *Rummel*, the Court does not purport to overrule *Rummel*. I therefore dissent.

The Court's starting premise is that the Eighth Amendment's Cruel and Unusual Punishments Clause "prohibits not only barbaric punishments, but also sentences that are disproportionate to the crime

committed." **What the Court means is that a sentence is unconstitutional if it is <u>more severe than five Justices think appropriate</u>.** In short, all sentences of imprisonment are subject to appellate scrutiny to ensure that they are "proportional" to the crime committed.

The Court then sets forth three **assertedly "objective"** factors to guide the determination of whether a given sentence of imprisonment is constitutionally excessive: (1) the "gravity of the offense and the harshness of the penalty"; (2) a comparison of the sentence imposed with "sentences imposed on other criminals in *the same* jurisdiction"; (3) and a comparison of "the sentences imposed for commission of the same crime in *other* jurisdictions." In applying this analysis, the Court determines that respondent "has received the penultimate sentence for *relatively minor* criminal conduct. He has been treated more harshly than other criminals in the State who have committed more serious crimes. He has been treated more harshly than he would have been in any other jurisdiction..."

Therefore, the Court concludes, respondent's sentence is "significantly disproportionate to his crime, and is...prohibited by the Eighth Amendment." This analysis is completely at odds with the reasoning of our recent holding in *Rummel*...The facts in *Rummel* bear repeating. Rummel was convicted in 1964 of fraudulent use of a credit card; in 1969, he was convicted of passing a forged check; finally, in 1973 Rummel was charged with obtaining money by false pretenses, which is also a felony under Texas law. These three offenses were indeed nonviolent. Under Texas' recidivist statute, which provides for a mandatory life sentence upon conviction for a third felony, the trial judge imposed a life sentence as he was obliged to do after the jury returned a verdict of guilty of felony theft.

Rummel, in this Court, advanced precisely the same arguments that respondent advances here; we rejected those arguments notwithstanding that his case was stronger than respondent's. The test in *Rummel* which we rejected would have required us to determine on an abstract moral scale whether Rummel had received his "just deserts" for his crimes. We declined that invitation; today the Court accepts it. Will the Court now recall Rummel's case so five Justices will not be parties to "disproportionate" criminal justice?

It is true, as we acknowledged in *Rummel*, that the "Court has on occasion stated that the Eighth Amendment prohibits imposition of a sentence that is grossly disproportionate to the severity of the crime." But even a cursory review of our cases shows that this type of proportionality review has been carried out only in a very limited category of cases, and never before in a case involving solely a sentence of imprisonment. In *Rummel*, we said that the proportionality concept of the capital punishment cases was inapposite because of the "unique nature of the death penalty..." "Because a sentence of death differs in kind from any sentence of imprisonment, no matter how long, our decisions applying the prohibition of cruel and unusual punishments to capital cases are of limited assistance in deciding the constitutionality of the punishment meted out to Rummel."

The *Rummel* Court also rejected the claim that *Weems*[3] required it to determine whether Rummel's punishment was "disproportionate" to his crime...In *Rummel* the Court carefully noted that "*Weems'*

[3]Case 8A-CUP-3 on this website.

finding of disproportionality cannot be wrenched from the facts of that case." **The lesson the *Rummel* Court drew from *Weems* and from the capital punishment cases was that the Eighth Amendment did not authorize courts to review sentences of *imprisonment* to determine whether they were "proportional" to the crime.** In language quoted incompletely by the Court, the *Rummel* Court stated:

> "Given the *unique nature* of the punishments considered in *Weems* and in the death penalty cases, one could argue without fear of contradiction by any decision of this Court that for crimes concededly classified and classifiable as felonies, that is, as punishable by significant terms of imprisonment in a state penitentiary, the ***length of the sentence actually imposed is PURELY A MATTER OF LEGISLATIVE PREROGATIVE***."

Five Justices joined this clear and precise limiting language.

...The *Rummel* Court emphasized, as has every opinion in capital cases in the past decade, that it was possible to draw a "bright line" between "the punishment of death and the various other permutations and commutations of punishment short of that ultimate sanction"; similarly, a line could be drawn between the punishment in *Weems* and "more traditional forms of imprisonment imposed under the Anglo-Saxon system." However, the *Rummel* Court emphasized that drawing lines between different sentences of imprisonment would thrust the Court inevitably "into the basic line-drawing process that is pre-eminently the province of the legislature" and produce judgments that were no more than the visceral reactions of individual Justices.

The *Rummel* Court categorically rejected the very analysis adopted by the Court today...

First, it rejected the distinctions *Rummel* tried to draw between violent and nonviolent offenses, noting that "the absence of violence does not always affect the strength of society's interest in deterring a particular crime or in punishing a particular criminal." Similarly, distinctions based on the amount of money stolen are purely "subjective" matters of line drawing.

Second, the Court squarely rejected *Rummel's* attempt to compare his sentence with the sentence he would have received in other States -- an argument that the Court today accepts. The *Rummel* Court explained that such comparisons are flawed for several reasons. For one, the recidivist laws of the various states vary widely. "It is one thing for a court to compare those States that impose capital punishment for a specific offense with those States that do not. It is quite another thing for a court to attempt to evaluate the position of any particular recidivist scheme within *Rummel's* complex matrix." Another reason why comparison between the recidivist statutes of different states is inherently complex is that some states have comprehensive provisions for parole and others do not. Perhaps most important, **such comparisons trample on fundamental concepts of federalism. Different states surely may view particular crimes as more or less severe than other states**. Stealing a horse in Texas may have different consequences and warrant different punishment than stealing a horse in Rhode Island or Washington, D.C. Thus, even if the punishment accorded Rummel in Texas were to exceed that which he would have received in any other state, "that severity

hardly would render Rummel's punishment 'grossly disproportionate' to his offenses or to the punishment he would have received in the other States...**Absent a constitutionally imposed uniformity inimical to traditional notions of federalism, some State will always bear the distinction of treating particular offenders more severely than any other State.**"

Finally, we flatly rejected Rummel's suggestion that we measure his sentence against the sentences imposed by Texas for other crimes:

> "Other crimes, of course, implicate other societal interests, making any such comparison inherently speculative...Once the death penalty and other punishments different in kind from fine or imprisonment have been put to one side, there remains little in the way of objective standards for judging whether or not a life sentence imposed under a recidivist statute for several separate felony convictions not involving 'violence' violates the cruel-and-unusual-punishment prohibition of the Eighth Amendment."

Rather, we held that the severity of punishment to be accorded different crimes was peculiarly a matter of legislative policy. In short, *Rummel* held that the length of a sentence of imprisonment is a matter of legislative discretion; this is so particularly for recidivist statutes. I simply cannot understand how the Court can square *Rummel* with its holding that "a criminal sentence must be proportionate to the crime for which the defendant has been convicted."

If there were any doubts as to the meaning of *Rummel*, they were laid to rest last Term in *Hutto v. Davis* (1982) [where we upheld a 40-year sentence for the possession of nine ounces of marihuana.] ...*Hutto* makes crystal clear that under *Rummel* it is error for appellate courts to second-guess legislatures as to whether a given sentence of imprisonment is excessive in relation to the crime, as the Court does today...

While the doctrine of *stare decisis* does not absolutely bind the Court to its prior opinions, a decent regard for the orderly development of the law and the administration of justice requires that directly controlling cases be either followed or candidly overruled. Especially is this so with respect to two key holdings, neither more than three years old.

Although historians and scholars have disagreed about the Framers' original intentions, the more common view seems to be that the Framers viewed the Cruel and Unusual Punishments Clause as prohibiting the kind of torture meted out during the reign of the Stuarts. Moreover, it is clear that until 1892, over 100 years after the ratification of the Bill of Rights, not a single Justice of this Court even asserted the doctrine adopted for the first time by the Court today. The prevailing view up to now has been that the Eighth Amendment reaches only the *mode* of punishment and not the length of a sentence of imprisonment. In light of this history, it is disingenuous for the Court blandly to assert that "[the] constitutional principle of proportionality has been recognized explicitly in this Court for almost a century." That statement seriously distorts history and our cases...

Today's conclusion by five Justices that they are able to say that one offense has less "gravity" than another is nothing other than a bald substitution of individual subjective moral values for those of the legislature. Nor, as this case well illustrates, are we endowed with **Solomonic** wisdom that permits us to draw principled distinctions between sentences of different length for a chronic "repeater" who has demonstrated that he will not abide by the law...

Legislatures are far better equipped than we are to balance the competing penal and public interests and to draw the essentially arbitrary lines between appropriate sentences for different crimes...

Today [the Court] holds that a sentence of life imprisonment, without the possibility of parole, is excessive punishment for a seventh allegedly "nonviolent" felony. How about the eighth "nonviolent" felony? The ninth? The twelfth? Suppose one offense was a simple assault? Or selling liquor to a minor? Or statutory rape? Or price fixing? **The permutations are endless and the Court's opinion is bankrupt of realistic guiding principles.** Instead, it casually lists several allegedly "objective" factors and arbitrarily asserts that they show respondent's sentence to be "significantly disproportionate" to his crimes. Must all these factors be present in order to hold a sentence excessive under the Eighth Amendment? How are they to be weighed against each other? Suppose several states punish severely a crime that the Court views as trivial or petty? I can see no limiting principle in the Court's holding...

It is indeed a curious business for this Court to so far intrude into the administration of criminal justice to say that a state legislature is barred by the Constitution from identifying its habitual criminals and removing them from the streets... It is even more curious that the Court should brush aside controlling precedents that are barely in the bound volumes of the United States Reports. The Court would do well to heed Justice Black's comments about judges overruling the considered actions of legislatures under the guise of constitutional interpretation:

> "Such unbounded authority in any group of...judges would unquestionably be sufficient to classify our Nation as a government of men, not the government of laws of which we boast. With a 'shock the conscience' test of constitutionality, citizens must guess what is the law, guess what a majority of nine judges will believe fair and reasonable. Such a test wilfully throws away the certainty and security that lies in a written constitution, one that does not alter with a judge's health, belief, or his politics." *Boddie v. Connecticut (1971)* (dissenting).