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I. Introduction

In 1995, Toronto M. Patterson ("Patterson") was convicted and sentenced to death for killing his cousin and her two daughters. At the time the crime was committed, Patterson was seventeen years old and did not have a prior criminal record or a history of violence.[1] After his appeals were denied, Patterson asked the United States Supreme Court to stay the execution of his death sentence.[2] The Court denied Patterson's application for a stay of execution and it denied his petition for a writ of habeas corpus.[3]

II. Analysis

The majority of the Court did not offer an explanation of its refusal to stay Patterson's execution.[4] However, the Court's refusal was grounded in its decision in *Stanford v. Kentucky*.[5] *Stanford* held that the state could prescribe the death penalty for juveniles who were sixteen or seventeen at the time they committed a capital murder.[6] The Court reasoned that the Eighth Amendment's prohibition against the imposition of cruel or unusual punishment must be judged by the standards of decency held by modern American society.[7] The Court determined that the consensus among the states that use the death penalty was that capital punishment was an acceptable penalty for juvenile offenders.[8]

Justice Stevens dissented in *Patterson*; it is his opinion that the consensus among the states and the international community has shifted since the Court decided *Stanford*.[9] Stevens urged the Court to reconsider its decision on capital

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1. American Bar Association, *Juvenile Death Penalty, Toronto Patterson, at* http://www.abanet.org/crimjust/juvjus/patterson.html.

2. Patterson v. Texas, 123 S. Ct. 24, 24 (2002).

3. *Id.*

4. *Id.*

5. *Id.*; *see* Stanford v. Kentucky, 492 U.S. 361, 380 (1989) (holding that the Eighth Amendment does not prohibit the imposition of capital punishment on juveniles who are sixteen or seventeen years old); Edmund P. Power, *Too Young to Die: the Juvenile Death Penalty After* Atkins v. Virginia, 15 CAP. DEF. J. 93 (2002).

6. *Stanford*, 492 U.S. at 380.

7. *Id.* at 378.

8. *Id.* at 371.

9. *Patterson*, 123 S. Ct. at 24; *see* Power *supra*, note 5 at 93.

sentences that are imposed on juveniles as soon as possible.[10] Therefore, he recommended that the Court stay Patterson's execution until it could take up the issue.[11]

Justice Ginsburg, joined by Justice Breyer, agreed with Justice Stevens and concluded that the issue of capital punishment for juveniles must be revisited.[12] Ginsburg's dissent was based on the Court's decision in *Atkins v Virginia*,[13] in which the Court held that the execution of a mentally retarded defendant is prohibited by the Eighth Amendment.[14] The Court in *Atkins* concluded that the appropriate punishment for a crime must be proportional to the culpability of the offender.[15] The Court found that the personal culpability of mentally retarded defendants is often diminished by their deficient comprehension abilities.[16] Modern research reveals that many of the comprehension deficiencies prevalent in juveniles parallel the deficiencies of the mentally retarded.[17] Ginsburg argued that the holding of *Atkins* created a reasonable argument for a reconsideration of *Stanford* and joined Justice Stevens's assertion that Patterson's execution should be stayed until a reconsideration could take place.[18]

III. Conclusion

Shifting international and domestic norms are marginalizing the execution of capital defendants who committed their crimes before the age of eighteen. The *Patterson* dissents indicate that the Court is likely to revisit the execution of juvenile defendants in light of *Atkins*. The diminished ability fully to comprehend the death penalty exhibited in mentally retarded defendants is analogous to the formative comprehension of juvenile defendants. In light of these similarities, Ginsburg's opinion that *Atkins* creates a reasonable argument for the reconsideration of *Stanford* should compel the Court to reconsider its position on the execution of juvenile offenders.[19]

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10. *Patterson*, 123 S. Ct. at 24.

11. *Id.*

12. *Id.*

13. 122 S. Ct. 2242 (2002).

14. *Patterson*, 123 S. Ct. at 24; *see* Atkins v. Virginia, 122 S. Ct. 2242, 2252 (2002) (holding that the Eighth Amendment prohibits the execution of the mentally retarded); Kristen F. Grunewald, Case Note, 15 CAP. DEF. J. 117 (2002) (analyzing Atkins v. Virginia, 122 S. Ct. 2242 (2002)).

15. *Atkins*, 122 S. Ct. at 2251.

16. *Id.* at 2250-51; *see* Power, *supra*, note 5, at 99.

17. *See* Power, *supra*, note 5, at 99.

18. *Patterson*, 123 S. Ct. at 24.

19. Please contact the Virginia Capital Case Clearinghouse for a copy of the Motion to Declare the Death Penalty Unconstitutional as Applied to Juvenile Offenders.