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106 L. Ed. 2d 306 (1989) United States Supreme Court**

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STANFORD v. KENTUCKY, WILKINS v. MISSOURI
109 S. Ct. 2969, 106 L. Ed. 2d 306 (1989)
United States Supreme Court

FACTS

On January 7, 1981 Kevin Stanford raped, sodomized, and shot to death 20-year old Baerbel Poore in connection with robbing the gas station where Poore worked. Stanford laughed while explaining to a corrections officer that Poore was Stanford's neighbor and could identify him unless killed. Stanford was 17 years and 4 months of age at the time of the murder.

Kentucky law allows juveniles over 16 years of age and charged with a felony to be tried as an adult. In considering this law the Kentucky legislature had examined the possibility of a juvenile receiving a capital sentence. The juvenile court certified Stanford to stand trial as an adult.

Heath Wilkins pled guilty to murdering Nancy Allen on July 27, 1985 while robbing her convenience store. Wilkins requested and received the death penalty. Wilkins was 16 years and 6 months of age when he murdered Allen.

Missouri law allows for certification of juveniles to stand trial as adults. The Missouri legislature had never directly examined whether juveniles could be sentenced to death. The juvenile court certified Wilkins to stand trial as an adult.

Both Stanford and Wilkins had previous juvenile adjudications. The transferring court found that the state was incapable of rehabilitating Stanford or Wilkins based upon previous lack of success.

HOLDING

The Supreme Court granted certiorari in order to decide whether the Eighth Amendment's prohibition against "cruel and unusual punishments" precludes death-eligibility for 16 or 17 year olds and younger as a class.

The Court affirmed both death sentences. In examining the issue of death eligibility for all juveniles as a class, Justice Scalia, writing for the Court, first looked to common law tradition. A rebuttable presumption of incapacity to commit a felony at 14 years of age prevailed at the time of the adoption of the Eighth Amendment. Thus, the framers would not have considered death-eligibility for juveniles above age 14 "cruel and unusual punishment".

All members of the court agree that whether or not a contemporary punishment is cruel and unusual for Eighth Amendment purposes depends upon the "evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86 (1958). By examining objective standards the Court purposed to find whether a national consensus against death-eligibility for all juveniles exists.

The Court held the determinative objective standard to be the action of state legislatures. The Court found that no consensus against death-eligibility for all juvenile offenders exists since 22 states under current statutes would allow 16 year olds to receive a death sentence.

The separate opinions including the dissent counted the death penalty states and related statistics much differently. One point of contention centered around the fact that states with no death penalty statutes and states declining to carry out capital sentences substantially outnumber the states which have executed offenders in modern times.

The Court also accepted the actions of juries as objective indicators of evolving standards of decency. Evidence that a lower percentage of offenders under the age of 18 receive a death sentence

than offenders over the age of 18 failed to convince the Court of the existence of a national consensus against imposing the death penalty upon any juvenile offender. The fact that some juries were willing to impose the death penalty upon juveniles argued against the existence of the national consensus.

In Justice Scalia's plurality opinion such indicators as the age state legislatures allow young people to engage in voting, driving, or drinking were seen as irrelevant in determining the existence of a national consensus regarding death-eligibility for juvenile offenders. Non-legislative evidence such as public opinion polls, views of interest groups, and positions adopted by professional groups were also held to be totally irrelevant.

Determining whether a punishment violates any substantive Eighth Amendment rights also involves evaluating the punishment in light of the legitimate goals of penology. These goals regarding the death penalty are deterrence and retribution.

Appellants argued that if juveniles are not capable of being deterred by the death penalty because they are not sufficiently developed to appreciate the finality of death, no penological goal would be served by executing juveniles. In failing to achieve its goal of deterrence, death-eligibility for juvenile offenders would rest upon no acceptable justification, necessarily violating the Eighth Amendment. The Court held against this argument.

Appellants further argued that retribution would be disproportionate to the offense where the offenders are not completely developed psychologically, thus less morally blameworthy for their crimes, undeserving of the ultimate retributive act. The Court held that procedures for individualized consideration, being an integral part of the imposition of the death penalty for any offender, would be sufficient to determine moral blameworthiness. If mitigation evidence indicates insufficient development for a death sentence to be proportionate, juries must be free to impose a non-capital sentence. Individual examination was the key for the plurality. The Court refused to hold that juvenile offenders as a class are insufficiently developed psychologically to deserve the death penalty.

Justice O'Connor, concurring in the result, referred to her concurrence in *Thompson v. Oklahoma*, 487 U.S. —, 108 S. Ct. 2687, 101 L. Ed. 2d 702 (1988). In *Thompson*, Justice O'Connor wrote that she believed a national consensus against executing 15 year olds and younger might very well exist, but she was unwilling to hold categorically that it did in fact exist. She wanted to look to the state legislatures in order to determine the existence of such a consensus. She wrote that unless a state legislature had specifically voted to allow the execution of 15 year olds, no death sentences of 15 year olds should be upheld. In the cases at bar, enough state legislatures had specifically voted to allow execution of 16 and 17 year olds that she perceived no national consensus against it.

Justice O'Connor disagreed with the plurality on the issue of proper indicia for considering evolving standards. She argued that the Court should consider the ages the state legislatures allow young people to engage in voting, drinking, and driving as well as the fulfillment of penological goals.

ANALYSIS

The primary effect of these decisions in Virginia, which has not legislatively determined a minimum age for the death penalty, is that the death penalty statute does not have to be reexamined by the General Assembly in order for 16 or 17 year olds to be executed. *Thompson* had established that death-eligibility solely created by

waiver of juvenile court jurisdiction in capital cases involving 15 year olds was unacceptable under *Trop. Thompson* still means that Virginia cannot execute 15 year olds unless the General Assembly votes to allow it. However, Justice O'Connor in the cases at bar was not persuaded that a national consensus exists against executing 16 or 17 year olds. Therefore the state legislatures are not required specifically to authorize their execution.

Also *Stanford* establishes the supreme importance of presenting a persuasive, individualized case in mitigation. The entire Court held that some 16 and 17 year old offenders may be so undeveloped that they are not sufficiently blameworthy to warrant the death

penalty. In Virginia, age is a statutorily enumerated mitigating factor. The plurality held that finding lack of moral blameworthiness is the jury's responsibility. Thus the defense must persuade the jury during individual examination that the defendant is not sufficiently blameworthy to impose the death penalty. The dissenters mentioned societal shared blame for the crimes of young offenders with disastrous childhoods. The plurality did not discount the value of such mitigating evidence. It held that all mitigation evidence is for the jury to examine and evaluate.

Summary and analysis by: Kerry D. Lee

SOUTH CAROLINA v. GATHERS
109 S. Ct. 2207, 104 L. Ed. 2d 876 (1989)
United States Supreme Court

In a five to four decision the Supreme Court (Justice Brennan, joined by Justices Marshall, Blackmun, Stevens and White [concurring]), held that a prosecutor's comments pertaining to personal characteristics of the victim made during the sentencing phase of a capital trial were irrelevant to the sentencing decision, and necessitated a new sentencing hearing. Justice O'Connor filed a dissenting opinion in which Chief Justice Rehnquist and Justice Kennedy joined. Justice Scalia filed a separate dissent.

FACTS

Demetrius Gathers and several accomplices had been walking through a park when they encountered the victim, Richard Haynes. After Haynes failed to respond to Gathers' attempt to start a conversation, Gathers and his friends beat the victim severely. While the victim was apparently unconscious, Gathers forced an umbrella into the victim's anus causing a perforated rectum. A short time later Gathers returned to the scene, stabbed the victim, and proceeded to search through his belongings in an attempt to find something of value to steal.

Gathers was convicted in the General Sessions Court of Charleston County on the charges of murder and first-degree criminal sexual conduct. He was sentenced to death during the sentencing phase of South Carolina's bifurcated capital trial system. He appealed to the Supreme Court of South Carolina which affirmed his conviction, but reversed the death sentence. In its decision the court cited *Booth v. Maryland*, 482 U.S. 496, 107 S.Ct. 2529, 96 L. Ed. 2d 440 (1987), and held that comments made by the prosecution during its closing arguments deprived Gathers of his Eighth and Fourteenth Amendment rights by allowing the jury to consider evidence that was irrelevant to the sentencing decision. *State v. Gathers*, 295 S.C. 476, 369 S.E.2d 140 (1988). South Carolina petitioned the Supreme Court for certiorari, and in an opinion filed by Justice Brennan the Supreme Court affirmed the reversal of the death sentence.

HOLDING

In the plurality opinion, the Court affirmed the reversal of Gathers' death sentence and restated its holding in *Enmund v. Florida*, that "'for purposes of imposing the death penalty . . . the defendant's punishment must be tailored to his personal responsibility and moral guilt.'" *Gathers*, 109 S. Ct. at 2210, quoting *Enmund v. Florida*, 458 U.S. 782, (1982), 102 S. Ct. 3368, 73 L. Ed. 2d 1140.

ANALYSIS

In *Gathers*, the prosecution's closing arguments encouraged the jury to draw inferences about the victim's personal life from items he had in his possession at the time of his death. In particular, the prosecutor drew elaborate analogies to the victim's character from a laminated prayer and a voter registration card. Both of these items, the Court pointed out, were unlikely to have been seen or read by the accused. In holding that this evidence was irrelevant to the sentencing decision, the Court stated that "the content of the various papers . . . was purely fortuitous, and cannot provide any information relevant to the defendant's moral culpability . . . [and] their content cannot be said to relate directly to the circumstances of the crime." *Id.* at 2211. Although the Court stated that the content of the items was irrelevant, it indicated that the act of searching through the victim's belongings and callously scattering them about, was a proper factor to be considered by the jury. However, because the evidence showed that Gathers had no knowledge of the victim's possessions or background when he made his decision to kill, prosecutorial comment beyond the act itself was improper.

In reaching its decision, the Court relied heavily on its previous holding in *Booth v. Maryland*, 482 U.S. 496 (1987). In *Booth*, the Court held that the use of a victim impact statement during the sentencing phase of a capital trial was improper because it focused on the victim, and on "factors about which the defendant was unaware, and that were irrelevant to the decision to kill." *Id.* at 505. Specifically, the victim impact statements in *Booth* were a compilation of the emotional, physical and economic harm which the family suffered as a result of the killing of their parents.

The holding and analysis in *Booth* was also relevant to Gathers' claim that his Eighth and Fourteenth Amendment rights had been violated by allowing the jury to administer arbitrary and capricious punishments. The Court in *Booth* held that the admission of irrelevant evidence, similar to the evidence admitted in *Gathers*, "creates a constitutionally unacceptable risk that the jury may impose the death penalty in an arbitrary and capricious manner." *Id.* at 503. The Court reasoned that the admission of such evidence could foster arbitrary findings by: 1) "divert[ing] the jury's attention away from the defendant's background . . . and the circumstances of the crime"; and 2) by the random variations of each family's communicative abilities "in expressing their grief." *Id.* at 505. "[T]here [is no] justification for permitting such a decision [life or death] to turn on the perception that the victim was a sterling member of the community rather than someone of questionable character." *Id.* at 506.

The holdings in *Booth* and *Gathers* are somewhat analogous to the holding in *California v. Brown*, 479 U.S. 538, 107 S. Ct. 837, 93 L. Ed. 2d 934 (1987). In *Brown*, the Court held that it was permis-