

Summary of SC91006, *State of Missouri v. Antonio A. Andrews*

Appeal from the St. Louis city circuit court, Judge Dennis M. Schaumann
Argued and submitted Oct. 20, 2010; opinion issued Dec. 21, 2010

Attorneys: Andrews was represented by Brocca Smith of the public defender's office in St. Louis, (314) 340-7662; and the state was represented by Evan J. Buchheim and Shaun J. Mackelprang of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A person who was 15 years old at the time he committed first-degree murder appeals his conviction and challenges the constitutional validity of his certification to stand trial as an adult and resulting mandatory sentence of life in prison without the possibility of parole. In a 4-3 decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms his conviction. The juvenile certification procedure does not violate the Sixth Amendment right to a jury trial. There is no right to a jury trial in proceedings in the juvenile division. A jury trial was held on his criminal charges. Further, once a juvenile is certified to stand trial as an adult and is found guilty of first-degree murder, it is not cruel and unusual punishment in violation of the Eighth Amendment to sentence that juvenile to life in prison without the possibility of parole. As Chief Justice John Roberts noted in a concurring opinion in a recent United States Supreme Court decision, there is nothing inherently unconstitutional in sentencing a minor to life without parole. The evidence supports the jury's finding that the person had enough time to have deliberated before committing the murder. Further, he failed to raise any argument during trial that the presence of uniformed officers during his jury trial denied him an environment of impartiality; therefore, the issue is not preserved for appeal.

In a dissenting opinion, Judge Michael A. Wolff writes that he would vacate the sentence and remand (send back) the case for re-sentencing to life in prison with the possibility of parole. He would find that the Eighth Amendment precludes sentencing a juvenile offender to life in prison with no parole, which he states essentially is a death sentence, with no regard for the juvenile's scientifically established diminished capacity and culpability or the penological goals of retribution, deterrence, incapacitation and rehabilitation. He would find the statutory sentencing scheme also violates the Eighth Amendment because it fails to consider age as a mitigating factor. For offenders older than 18 years, juries are able to consider age and other mitigating factors before recommending punishment, but the sentencing scheme for offenders younger than 18 years precludes such jury consideration. Although age is considered during the certification process, the question of whether a child should be tried as an adult requires a far different determination than whether a child should be sentenced to life in prison without parole.

In a dissenting opinion, Judge Laura Denvir Stith would hold that, under United States Supreme Court precedent and Missouri law, a defendant's age must be considered when deciding whether to sentence a juvenile to life in prison without parole. She also would hold that because United States Supreme Court precedent requires that all facts that increase the penalty for a crime beyond the prescribed statutory maximum must be submitted to the jury, a jury must determine

the facts necessary for certifying a juvenile as an adult. Because the fact-finding that subjected the juvenile here to a penalty beyond the prescribed statutory maximum was found by a judge and not a jury, the person's Sixth Amendment right to a jury determination of punishment was violated.

Facts: In August 2007, 15-year-old Antonio Andrews and three friends were hanging out at a residence in St. Louis. Before Andrews and one of the friends walked down the street to get some Chinese food, he asked for and received a .38-caliber revolver. During the walk, a police officer attempted to stop and question Andrews and the friend. Andrews and the friend fled, and the officer pursued them, first in his patrol car and then on foot. At one point, Andrews stopped and told his friend he was tired of the officer chasing them. He pulled the gun out, waited for the officer to arrive and shot him in the upper back. The officer died later that night due to his injury. In December 2007, the juvenile division of the circuit court entered certain findings of fact and conclusions of law and then certified Andrews to be prosecuted as an adult in the circuit court under the state's general criminal laws. In February 2008, Andrews was indicted for first-degree murder and armed criminal action. In August 2010, the jury found him guilty of both charges. After Andrews waived jury sentencing, the circuit court sentenced him to life in prison without the possibility of probation and parole for the murder conviction – the only sentence available under section 562.020.2, RSMo 2000, and *Roper v. Simmons*, 543 U.S. 551 (2005) – and to a consecutive sentence of 50 years in prison for the armed criminal action conviction. Andrews appeals.

AFFIRMED.

Court en banc holds: (1) Because Andrews failed to demonstrate that the juvenile certification procedure under section 211.071, RSMo 2000, clearly and undoubtedly violates his Sixth Amendment right to a jury trial, this Court will not declare it unconstitutional. Section 211.031, RSMo, gives exclusive original jurisdiction over all children under the age of 17 years to the juvenile division of the circuit court. Under section 211.071.1, however, the juvenile division is required to hold a hearing to determine whether to certify to stand trial as an adult any child between the ages of 12 and 17 years who is alleged to have committed first-degree murder or one of the other serious crimes listed in that statute. The juvenile division must analyze 10 factors enumerated in section 211.071.6 and, if it certifies the child, set out its reasons for that certification in its judgment. This certification process is not an unconstitutional enhancement of the sentence as contemplated by *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000), which held that any fact – other than the fact of a prior conviction – that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. The 10 criteria considered in a juvenile certification hearing are not the type of factual determination that was understood to be within the jury's domain by the framers of the Bill of Rights and, therefore, is not controlled by *Apprendi* and its progeny. No juvenile court existed before 1899; before then, juvenile offenders were treated no differently from adult offenders and were prosecuted in courts of general jurisdiction. The determination of the statutory certification criteria does not increase the statutory maximum punishment the juvenile will face; it only determines which court will have jurisdiction over the juvenile. The statutory maximum punishment for a crime is established by the criminal code, not a juvenile certification hearing. Every state with juvenile certification statutes similar to Missouri's that has considered

this issue has concluded that *Apprendi* does not apply to a juvenile transfer or certification proceeding and that there is no constitutional right to a jury determination regarding the transfer of a juvenile's case to a court of general jurisdiction. Andrews' certification did not enhance the potential maximum sentence for the crime he was alleged to have committed – the maximum sentence for any person, under or over 18 years, who commits first-degree murder is life in prison without parole. The judgment that certified Andrews as an adult did not impose any sentence on him whatsoever; it only determined that his case would be heard in the general jurisdiction division of the circuit court, not in the juvenile division. He was not entitled to a jury trial until after he was certified to stand trial as an adult, and he received a jury trial in the circuit court.

(2) Andrews has failed to demonstrate that Missouri's imposition on a juvenile of a mandatory sentence of life without parole for a first-degree murder conviction clearly and undoubtedly violates the Eighth Amendment prohibition against cruel and unusual punishment. Pursuant to section 565.020, RSMo 2000, the punishment for first-degree murder is either death or life in prison without eligibility for probation or parole. But the United States Supreme Court in *Roper* held that it is cruel and unusual punishment in violation of the Eighth Amendment to sentence to death an individual who was younger than 18 years at the time of the crime. 543 U.S. 551. This leaves life without parole the only sentence available for a minor convicted of first-degree murder.

Although the United States Supreme Court recently held that it violates the Eighth Amendment's prohibition against cruel and unusual punishment for a juvenile offender to be sentenced to life without parole for a nonhomicide offense, *Florida v. Graham*, 130 S.Ct. 2011, 2018 (2010), there is no explicit prohibition against such a sentence for a juvenile who commits homicide. Rather, *Roper* noted that the punishment of life without parole is a severe enough sanction to deter minors from committing homicide, 543 U.S. at 572; *Graham* recognized a line exists between homicide and other serious violent offenses against an individual, 130 S.Ct. at 2027; in a concurring opinion in *Graham*, Chief Justice Roberts said there is nothing inherently unconstitutional in imposing life sentences without parole on juveniles, 130 S.Ct. at 2041 (Roberts, C.J., concurring); and in his reply brief, Andrews concedes that the imposition of life without parole on a minor for homicide is not unconstitutional. Further, Missouri's statutory scheme expressly considers the youthfulness of a child during a certification hearing before exposing that child to the possibility of a mandatory life sentence without parole for first-degree murder.

(3) There is more than a sufficient basis for the jury to have found that Andrews had at least a brief moment of cool reflection before killing the officer, supporting his first-degree murder conviction. Under section 565.002(3), RSMo 2000, the "deliberation" necessary for a first-degree murder conviction under section 565.020.1, RSMo 2000, is defined as "cool reflection for any length of time no matter how brief." Here, the evidence showed that Andrews said he was tired of being chased, pulled the gun out of his pocket, and stopped and waited for the officer to arrive before shooting him.

(4) Andrews failed to preserve his argument that the presence of uniformed officers during his jury trial denied him an environment of impartiality. When he raised the issue before trial, the

court told his counsel to bring anything that infringed on Andrews' constitutional rights during trial so it could be addressed. He points to nothing in the record, however, that shows he complained about the presence of uniformed officers, made a record of the presence of any uniformed officers who were not testifying or made any argument that any presence of any officers affected his right to a fair trial.

Dissenting opinion by Judge Wolff: The author would vacate Andrews' sentence and remand the case for re-sentencing to life in prison with the possibility of parole.

He would hold that because the Eighth Amendment's prohibition against cruel and unusual punishment bars imposing a punishment that is disproportionate to the capacity of the offender to be held accountable, it precludes sentencing a juvenile to life in prison without the possibility of parole. An increasing body of scientific evidence shows that juveniles are less capable – and, therefore, less culpable – than adults, and the difference in mental development between a child and an adult, including the child's still-developing ability to make reasoned decisions, is a major premise underlying the United States Supreme Court decisions in *Roper* and *Graham*. Neither of these decisions precludes the relief Andrews seeks here. *Graham* did not hold that life without parole is constitutional for juveniles who commit homicide because that is not the issue the Supreme Court was asked to decide. Similarly, *Roper* did not hold that life without parole for juveniles is constitutional; the juvenile offender in that case was challenging a sentence of death. Further, in considering society's evolving standards of decency, as required for Eighth Amendment analysis, in states where courts have discretion as to whether to sentence a juvenile offender convicted of first-degree murder to life in prison without parole, only about 13 such juveniles have been so sentenced, and even in Missouri, where such discretion does not exist, legislation in a variety of other situations treat juveniles differently from adults. In essence, a sentence of life without parole is a death sentence for a juvenile offender, who will serve a greater number of years and a greater percentage of his life in prison than an adult. Such a sentence for juveniles, who have diminished capacity and culpability, also does not serve the penological goals of retribution, deterrence, incapacitation and rehabilitation. A sentence of life with parole would offer Andrews the possibility of redemption if the state's parole board determines, at some future date, that he is fit to be released on parole.

Another reason to find Missouri's sentencing scheme unconstitutional under the Eighth Amendment as applied to juvenile offenders is its failure to consider age as a mitigating factor. A jury may consider age and other mitigating factors before recommending a sentence for an offender older than 18 years but is precluded from doing so for an offender younger than 18 years who is charged with first-degree murder. If the consideration of the offender's age during the juvenile certification process is to satisfy *Graham*'s requirement that a child's youth be considered, then it must be considered by a jury. Further, the determination of whether a child should be tried as an adult – the only question determined at a certification hearing – is a far different determination than whether a child should be sentenced to life without parole.

Dissenting opinion by Judge Stith: The author would hold that a defendant's age should be a factor that can be considered when deciding whether to sentence to life in prison without parole. Although a juvenile may not be sentenced to death for committing a homicide under *Roper*,

Graham instructs that a defendant's age may affect the defendant's culpability and may mitigate the punishment for the crime.

The author further would hold that a jury, not a judge, must determine the facts necessary for certifying a juvenile as an adult. Under *Apprendi*, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. Under Missouri's certification proceeding, a defendant under the age of 17 years who is charged with first-degree murder either receives a "sentence" that lasts, at most, until he or she turns 21 years or receives a sentence that potentially extends for his or her entire life. In this case, the judge certified Andrews as an adult and, therefore, subjected him to a life sentence without parole. Under *Blakely v. Washington*, 542 U.S. 296, 303 (2004), the relevant statutory maximum is not the height of the statutory range provided for by the legislature but rather the maximum sentence a judge may impose based on facts found by a jury. The juvenile division made many findings of fact to certify Andrews as an adult, but the jury in his criminal case made no findings of fact that change the statutory maximum punishment he could receive. Therefore, the fact-finding that subjected Andrews to a penalty beyond the prescribed statutory maximum was found by a judge and not a jury. As such, his Sixth Amendment right to a jury determination under the United States Constitution was violated.