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State v. Boston, 131 Nev. Adv. Op. 98 (Dec. 31, 2015)

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CRIMINAL LAW: A WRIT OF HABEAS CORPUS BASED ON A NEW LAW

Summary

The Court considers an appeal from a district court order granting a post-conviction petition for a writ of habeas corpus. Specifically, the Court considered whether the holding in *Graham*² applies when an aggregate sentence imposed against a juvenile defender convicted of more than one nonhomicide offense is the equivalent of a life-without-parole sentence. The Court held that it does.

Background

In 1983, Andre Boston, who was sixteen years old at the time, was convicted of several crimes, for which the district court sentenced him to fourteen life sentences with the possibility of parole, plus a consecutive 92 years in prison. Boston appealed his conviction and the Nevada Supreme Court dismissed the appeal. In 1990, Boston filed a petition for post-conviction relief pursuant to NRS 177.315. The district court denied the petition without holding an evidentiary hearing, and the Supreme Court remanded for an evidentiary hearing. In 2011, 21 years after the Supreme Court issued the remittitur from his direct appeal, Boston filed a pro se post-conviction petition for a writ of habeas corpus in the district court, claiming that his sentence constituted cruel and unusual punishment under *Graham*. The district court denied the petition without considering Boston's good cause argument, and Boston appealed. The Nevada Supreme Court reversed in part, and remanded the case to the district court to consider whether *Graham* prohibits aggregate sentences that are the functional equivalent of life without the possibility of parole and whether *Graham* provided good cause to excuse the procedural defects. While Boston's appeal was pending, the Nevada Legislature passed Assembly Bill No. 267³, which amended NRS 176.025 to prohibit life sentences without the possibility of parole if the offender was a juvenile at the time he or she committed the crime.⁴ A.B. 267 also adds a new subsection to NRS Chapter 213, which makes prisoners eligible for parole after 15 years if their sentences were for nonhomicide crimes committed while they were juveniles.⁵ Based on the new law, the Court issued an Order Directing Supplemental Briefing and Inviting Amicus Briefing. Subsequently, the State, Boston, and amici filed supplemental briefs.

Discussion

The Court first found that Boston's petition is procedurally barred unless Boston can demonstrate a good cause and actual prejudice. But the Court held that the U.S. Supreme Court's

¹ By Nancy Snow.

² *Graham v. Florida*, 560 U.S. 48, 74 (2010) (The Supreme Court held that a juvenile receiving a life sentence without the possibility of parole for a nonhomicide offense violates the Eighth Amendment's prohibition against cruel and unusual punishment).

³ See A.B. 267, 78th Leg. (Nev. 2015).

⁴ *Id.*

⁵ *Id.*

decision in *Graham* constitutes good cause to overcome the procedural bars, since *Graham* was not decided until 2010, and Boston filed his petition within one year of the decision.

Subsequently, the Court held that *Graham* prohibits aggregate sentences that constitute life without the possibility of parole for a nonhomicide offense committed by a juvenile. The Court recognized the fact that courts have been inconsistent in deciding whether the *Graham* holding prohibits sentences that in aggregate constitute the functional equivalent of life without the possibility of parole. The State argued that *Graham* holding should be read narrowly to apply solely to a single life sentence without the possibility of parole for a nonhomicide offense. The Court disagreed, noting that there is nothing in the *Graham* decision that limits its holding to a single nonhomicide offense, and that Graham himself did not receive the specific sentence of life without parole.⁶

The Supreme Court reasoned that the functional-equivalent approach (prohibits aggregate sentences that are the functional equivalent of a sentence of life without the possibility of parole) best addresses the concerns enunciated by the U.S. Supreme Court regarding the culpability of juvenile offenders and the potential growth and maturity of such offenders.

The State further argued that the amendments in A.B. 267 do not include the functional-equivalent approach. The Court disagreed, stating that the plural form of “offense” in NRS 213 as amended by A.B. 267⁷ shows the Legislature’s intent to allow parole eligibility after 15 years when a juvenile is convicted of more than one nonhomicide offense and sentences are aggregate.

Conclusion

The Court agreed with the district court’s reasoning that *Graham* precludes aggregate sentences that constitute the functional equivalent of life without the possibility of parole against nonhomicide juvenile offenders, but vacated and remanded to the case to the district court to deny Boston’s petition, since the Legislature has already provided through A.B. 267 all that *Graham* requires, which is a meaningful opportunity for Boston to obtain release within his lifetime.

⁶ *Graham* received a life sentence in a jurisdiction that abolished its parole system. *See Graham*, 560 U.S. at 57.

⁷ A.B. 267 § 3(1), 78th Leg. (Nev. 2015); Nev. Rev. Stat. 213.12135.