

tion that also found him competent to stand trial, including a mid-trial hearing that reflected his competence during the actual trial and thus was a close example of his competence at a time of greatest demand. Therefore, the court found no error on the third judge's determination of competency.

Regarding Mr. Jones' second contention, the court found that it was not cruel and unusual punishment to mandate a defendant with developmental disability to life in prison without the possibility of parole. They noted that when deciding whether a punishment is cruel and unusual, courts often look to society standards and previous legislation, and they remarked that previous courts have declined to extend *Atkins* to prohibit mandatory sentences of life without parole for people with intellectual or developmental disabilities, though these were largely in unpublished opinions (*Commonwealth*, p 17). The court also commented on the differences between the death penalty and life imprisonment, observing "the concerns are less extreme" when facing life in prison versus the death penalty (*Commonwealth*, p 18). In addition, the court declined to equate the protection of juvenile defendants to adult defendants with developmental disability, noting that to do so would require "significant extrapolation from existing precedent" and also remarking that the prospect of rehabilitation may be less for adult defendants with developmental disabilities compared with juveniles (*Commonwealth*, p 16). The court noted that the adolescent brain is still developing, leading to impulsive behavior and a better prospect of rehabilitation, whereas developmental disability is an "immutable condition" (*Commonwealth*, p 17).

Discussion

Commonwealth addresses two key points that are of interest to the forensic psychiatrist. First, the case is a reminder that competency is a legal, not a clinical, decision. The trier of fact is not obligated to follow recommendations from expert medical testimony, even if multiple experts agree. *Commonwealth* also mentions basic components of competency determinations, reiterating the fluidity of competency and that it may change with variations in mental condition, treatment, and education. In addition, *Commonwealth* explains further that competency can shift throughout legal proceedings. When there are multiple competency hearings, each must be conducted *de novo*, and although past data may be relevant, evaluators and judges must

look at the facts as they present at the time. In this case, the court also highlighted that observations made closest to the time of trial will have weight that may be more significant than an individual's competence prior to trial proceedings.

Commonwealth also takes the position in its determination that mandating a defendant with developmental disability to life in prison without possibility of parole does not constitute cruel and unusual punishment. Clinically, it is noteworthy that *Atkins v. Virginia* was referenced in the defendant's arguments on this point, although that case involved an individual with an intellectual disability. In *Commonwealth*, the case revolved around an individual who primarily had a developmental disability, and clinicians should be attuned to these differences. Courts may or may not distinguish these constructs in their rulings. Regardless, *Commonwealth* considers some of their similarities and differences and declined to extend *Atkins* in this case, focusing instead on distinguishing execution of defendants from life sentences in prison. They note the immutability of developmental disabilities, and similarly declined to extend the findings related to juveniles and life sentences without parole to individuals with developmental disabilities. Of interest, however, the court references society's evolving standards, and one wonders whether evolving standards pertaining to the incarceration of individuals with developmental disabilities will shift over time.

Cruel and Unusual Punishment in Juvenile Sentencing

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The Functional Equivalent of Life Without Parole for Juvenile Nonhomicide Offenders Constitutes as Cruel and Unusual Punishment

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In the case of *People v. Contreras*, 4 Cal.5th 349 (2018), the Supreme Court of California considered

the constitutionality of sentences imposed on juvenile nonhomicide offenders. The Superior Court of San Diego County had convicted two individuals, both of whom were juveniles at the time of offenses, of kidnapping and several sexual offenses. The defendants were subsequently sentenced to 58 years to life and 50 years to life, respectively. On appeal, the Court of Appeals affirmed their convictions but reversed their sentences in the context of *Graham v. Florida*, 560 U.S. 48 (2010), holding their sentences did not give a realistic chance for release as they precluded possibility of parole until near the end of their expected lifetimes. Review was granted on the basis of consideration of whether the sentences imposed on these juvenile nonhomicide offenders violated the Eighth Amendment, to which the Supreme Court of California narrowly affirmed the Court of Appeals judgment and remanded resentencing.

Facts of the Case

On September 3, 2011 a 16-year-old female and her 15-year-old female friend attended a family birthday party in San Diego County, California. Around dusk, the females took a walk to a local greenbelt, where they sat to talk. Shortly thereafter, Leonel Contreras (LC) and William Rodriguez (WR), both 16 years old, walked past the girls and proceeded to tackle them to the ground from behind. The girls were forced to a vegetated area up an embankment that was not visible from the street.

WR and LC proceeded to forcibly rape, sodomize, and force oral copulation repeatedly on both girls. Throughout these acts, LC was noted to utilize a knife to threaten both girls. When finished, the boys threatened both girls harm if they told anyone what happened. The girls proceeded to walk to the party, ultimately admitting they'd been raped on inquiry.

The case was tried jointly before two juries in 2012, and WR and LC were charged as adults. WR was convicted of two counts of forcible rape, two counts of kidnapping, four counts of forcible oral copulation, and two counts of sodomy by use of force, additionally having committed the sexual assault crimes during a kidnapping against multiple victims. The other jury convicted LC of seven counts of forcible rape, conspiracy to commit kidnapping and forcible rape, rape by a foreign object, two counts of kidnapping, eight counts of forcible oral copulation, and two counts of sodomy by use of force all with use of a knife, additionally having committed

the sexual assault crimes during a kidnapping against multiple victims with a knife.

At the sentencing hearings, WR, noted to have no criminal history and a "very difficult upbringing," was sentenced to two consecutive terms of 25 years to life. Under California Penal Code, section 667.61, subdivision (i) (2011), the court noted it was required to sentence an additional 25 years to life but reasoned doing so would violate *Graham* and *People v. Caballero*, 282 P.3d 291 (Cal. 2012), and similarly was unable to impose statutory maximum sentences as they would fall outside of the defendant's natural life expectancies. LC, noted to have no arrests and one prior misdemeanor for vandalism, was felt to be the "shot caller" of the two, with the judge expressing skepticism about LC's ability to rehabilitate, and he was sentenced to two consecutive terms of 25 years to life in addition to two four-year terms in the setting of knife enhancement during the crimes. Both were sentenced within purview of the statutory "One Strike" law.

The defendants appealed the court's judgment and sentencing, and the Court of Appeals affirmed their convictions but reversed their sentences. The Court granted review in light of the holdings of *People v. Franklin* 202 Cal.Rptr. 3d 496 (2016), in which the defendant appealed his sentence to 50 years to life for first-degree murder, claiming it violated precedent that juvenile homicide offenders may not be sentenced to the functional equivalent of life without parole (LWOP). However, as he was entitled to a youth offender parole hearing during his 25th year of incarceration, his sentence was deemed neither LWOP nor the functional equivalent. As *Franklin* does not resolve cases where defendants are ineligible for youth offender parole hearings by the One Strike Law, the California Supreme court granted *certiorari* to evaluate prior supreme court precedents and whether the defendant's sentences violated the Eighth Amendment.

Ruling and Reasoning

Justice Liu wrote the majority 4-to-3 opinion. The Court reviewed previous findings from *Caballero* and *Graham*. In *Caballero*, a juvenile's sentence of 110 years to life for three counts of attempted murder was deemed the functional equivalent of LWOP, violating the Eighth Amendment. In *Graham*, the Court held that juveniles may be punished with long sentences, however no juvenile who commits a nonho-

homicide offense may be sentenced to LWOP. Although these cases together were interpreted to note that the Eighth Amendment does not allow juveniles who commit nonhomicide crimes to be sentenced to LWOP, neither considers whether a lengthy sentence, equivalent but short of such, would similarly violate the Eighth Amendment.

The Court first considered what constitutes a *de facto* LWOP sentence. They cited the Attorney General's definition that any term of imprisonment providing a juvenile offender with the opportunity of parole within his or her natural lifetime does not constitute a functional equivalent of LWOP. Utilizing such a definition would require an actuarial approach to sentencing based on an individual's predicted life expectancy. The majority noted information on life expectancy from the Centers for Disease Control and Prevention showing significant variations by gender and race as well as confounding variables including incarceration. The majority thus noted this definition leads to "a tangle of legal and empirical difficulties" due to possible disparate sentencing (*Contreras*, p 449). The court objected to utilization of such approach, citing the risk of creating gender and race discrimination in sentencing.

The Court then considered the holding in *Graham*, referencing that, while juveniles may be punished with long sentences, they must have "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation" (*Graham*, p 75). This ruling, however, gave no definition regarding the maximum length of incarceration before parole eligibility that would satisfy this holding. In reference to the citation of "some meaningful opportunity" the Court cited a defendant's need for reclaiming's one's value and place in society, belonging and redemption, and reintegration upon release, referencing a qualitative state beyond incarceration not defined by the quantitative measure of years. With lengthy sentences without opportunity for parole until age 58 or 60 in the case of the defendants, it gave little time to sufficiently reach these "rehabilitative ideals."

Finally, the Court noted that the capacity of juveniles to change depends on both outgrowing the qualities of youth as well as future incentives and opportunities. They argued that lengthy sentences dissuade juveniles from maturing into responsible adults, as they deprive them of not only basic liberties but the hope of restoration. The Court urged to remand sentencing on precedent noting "that the children who

commit even heinous crimes are capable of change" (*Montgomery*, p. 473), and consider the culpability of the juvenile offenders in the setting of a lack of maturity, the presence of negative influences, and the overall impulsive decision-making characteristic of youth.

Dissent

Chief Justice Cantil-Sakauye wrote the dissent for this opinion. The Chief Justice felt that the defendant's sentences did not violate the Eighth Amendment, citing several disagreements with the Court majority in this case. He first noted that the majority was misconstruing *Graham*, citing that its holding only invalidates narrowly defined, specific sentences: those that are without a realistic opportunity to obtain release and will essentially guarantee an individual will die in prison. The Chief Justice also felt the majority was utilizing a vague construction of *Graham* and not specifically defining what constitutes the implied meaningful opportunity for a defendant to reintegrate into society, noting that "profound life experiences may lie ahead of someone released from prison at 66 or 74." Finally, the Chief Justice noted through a defendant's utilization of certain opportunities, specifically good conduct credits as well as the Elderly Parole Program, which entitles prisoners at age 60 who have served 25 years in prison to a parole hearing, defendants may be released earlier than their original sentenced time.

Justice Kriegler wrote a supporting dissent, similarly noting that should the court deem such a sentence in violation of the Eighth Amendment per the majority, there must be further specification on breadth and limitations in application. Both Justices noted the majority gave no guidance on how a court may formulate a sentence that does not violate the Eighth Amendment.

Discussion

In the evaluation of juvenile offenders, clinicians must take into account the concept of the developing brain and its impact on behavior. The juvenile developing brain lacks maturity and often possesses an underdeveloped sense of responsibility, with individuals increasingly vulnerable to negative influences and peer pressure. Juveniles have the tendency to be more impulsive with ill-considered decisions and actions. In context of the developing brain, it is exceedingly difficult to delineate transient immaturity versus irreparable corruption on evaluation, noting that with maturation comes the tendency toward better

overall judgment, reduced impulsivity, and increased responsibility. Although past behavior is a key component of a standard psychiatric evaluation, clinicians must recognize the potential for change in juveniles, with the past actions of youth not definitively representative of future patterns of behavior.

Adjudicated NGRI on One Charge and Guilty on Another

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Trial Court Has the Discretion to Require a Defendant to Serve a Prison Sentence for One Offense Before Being Involuntarily Committed for a Separate NGRI Offense

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In *Williams v. Commonwealth*, 294 Va. 25 (2017), the Virginia Supreme Court evaluated a trial court's discretion related to the sequence of ordering incarceration before involuntary civil commitment. After pleading guilty to a July offense and not guilty by reason of insanity (NGRI) to an August offense, the defendant was sentenced to a 5-year prison term followed by commitment. The Virginia Supreme Court affirmed the lower court's decision.

Facts of the Case

Larry Lee Williams attacked his wife on July 8, 2014, and, again, on August 24, 2014. Mr. Williams had three prior convictions for assault. On September 2, 2014, he pleaded guilty to felony assault and battery, third or subsequent offense, for the July offense. Following the discovery of recordings of jail phone calls in which he stated that he could not recall the August offense due to a blackout, a forensic evaluation was ordered. A psychologist determined that Mr. Williams was competent to stand trial on all charges. At a May 18, 2015, plea hearing for the August offense, the Commonwealth announced that a plea deal had been reached: Mr. Williams would

accept responsibility for the July offense and the Commonwealth would stipulate to a NGRI plea for the August offense. Mr. Williams stated that he understood the potential consequences of pleading guilty and NGRI. The Circuit Court of the City of Richmond accepted the pleas and ordered Mr. Williams be placed in the custody of the Department of Behavioral Health and Developmental Services (DBHDS) for evaluation. He was thus hospitalized at Central State Hospital.

At a November 17, 2015, sentencing hearing, the Commonwealth proposed that Mr. Williams serve five years in prison, the maximum sentence, for the July offense, followed by commitment for the August offense. The defense requested that he be committed immediately, citing psychiatric and neuropsychological reports recommending mental health treatment. The circuit court agreed to the sequence proposed by the Commonwealth. Mr. Williams was sentenced to a five-year prison term preceding NGRI commitment. Mr. Williams appealed.

Ruling and Reasoning

The Virginia Supreme Court affirmed the judgment of the circuit court requiring Mr. Williams to serve time in prison and then be committed.

Mr. Williams' appeal was based on the grounds that the circuit court had violated due process rights by removing a person with mental illness from a hospital and sending him to prison without "time served" credit from hospitalization. While the alleged error was unpreserved (i.e., was not objected to in a lower court), the defense argued that an appellate court should review the case under the "ends of justice" exception. Rule 5:25 states that appellate courts can consider arguments as a basis for reversal, even if there was not a contemporaneous objection made in the lower court, when it would enable the court to attain the ends of justice. The defense contended that to not apply the ends of justice exception would result in a "grave injustice" (*Commonwealth v. Bass*, 292 Va. 19, 27 (2016)) because the circuit court had ignored the seriousness of Mr. Williams' mental illness. The defense concluded that he required treatment, not punishment.

The Virginia Supreme Court noted that Mr. Williams conceded not objecting in the circuit court and, therefore, objections were not preserved for review. The Supreme Court, therefore, could not consider those arguments as a basis for reversal except to attain the ends of justice. The court cited *Gheorghiu v. Commonwealth*,