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Md. high court weighs constitutionality of juvenile life sentences

By: Steve Lash Daily Record Legal Affairs Writer February 6, 2018

ANNAPOLIS – The Maryland Court of Appeals should set parole-reviewing standards to ensure that people sentenced as juveniles to life in prison have a "meaningful opportunity" for release based on their maturity and rehabilitation behind bars as required by the Constitution, a public defender told the state's top court Tuesday.

Brian M. Saccenti said the state's current "standard-less" review process regarding juvenile offenders violates the Constitution's Eighth Amendment prohibition on cruel and unusual punishment. Saccenti cited the 2010 U.S. Supreme Court decision *Graham v. Florida* that the Constitution requires juvenile offenders be given a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation," which he contended is not now possible in Maryland.

Maryland governors from both political parties went nearly 25 years without adopting any Parole Commission recommendation to release a prisoner sentenced to life in prison. Current Gov. Larry Hogan, a Republican who took office in January 2015, ended that drought by granting non-medical parole to two individuals who were serving life, as well commuting four life sentences.

Saccenti suggested a standard that demands the juvenile offender's maturity and rehabilitation in prison be a primary consideration of the parole board and that these offenders, now adults, enter the parole hearing with a presumption in favor of their release. That presumption would promote what the Supreme Court recognized in *Graham* about juvenile offenders, said Saccenti, who heads the Maryland public defender's appellate division.

"Children cannot be viewed simply as miniature adults," he said. "Children are different in ways that make them less culpable than adults."

Saccenti made his arguments in urging the Court of Appeals to overturn as illegal the life-in-prison-with-the-chance-for-parole sentences of three men who committed their crimes as juveniles but have no meaningful opportunity for release under the current system.

"We don't have (anything) in the regulation or the statute that directs the decision-makers as to when they are to parole somebody," Saccenti said. "It is left to the unfettered discretion of the parole commission. It does not embody the meaningful opportunity standard."

Assistant Maryland Attorney General Robert K. Taylor Jr. countered that the Parole Commission has standards calling for consideration of a juvenile offender's maturity and rehabilitation while in prison. However, he said application of those standards has not resulted in releases of juvenile lifers under Maryland's current system, in which the governor makes the ultimate decision on release.

"There is no indication that the commission is not doing its job," Taylor said. "We have a constitutionally sufficient process. The presumption is that the governor will follow the law."

Taylor said the three convicts' claims of illegal sentence should be rejected, as their sentences of life with the possibility of parole are permitted by statute. Any challenge to the parole process' constitutionality would have to occur in a separate proceeding, he added.

'Underfunctioning' system

But Taylor's call for rejection appeared to have little support from the court as the judges seemed focused on how they should apply the Supreme Court's *Graham* decision to the cases before them.

"How much weight should we give to the passage of time" regarding juvenile offenders? Chief Judge Mary Ellen Barbera asked.

Barbera and Judge Clayton Greene Jr., voiced concern about "de facto life without parole" sentences in the absence of a meaningful opportunity for release.

Judge Sally D. Adkins, citing the lack of juvenile offenders gaining parole, said the system seems to be "underfunctioning at the very least."

In response, Taylor said the parole process complies with the Supreme Court's call for a meaningful opportunity.

"It does not guarantee release," he said. "It guarantees an opportunity for release."

But Saccenti said the current parole-review system essentially tells those who committed their crimes as juveniles that "you will never change. You are condemned to die in prison."

Saccenti is appealing the life sentences of Daniel Carter, who committed first-degree murder at age 15; James Bowie, who committed attempted first-degree murder and robbery at age 17; and Matthew McCullough, who was found guilty of four counts of first-degree assault for an attack at age 17 and was given a de facto life sentence of 100 years in prison.

The Court of Appeals is expected to render its decisions by Aug. 31. The cases are *Daniel Carter v. Maryland*, *James Bowie v. Maryland* and *Matthew McCullough v. Maryland*, Nos. 54, 55 and 56 September Term 2017.

Federal case

The constitutional challenge before the Court of Appeals is similar to one the ACLU of Maryland is waging in the U.S. District Court in Baltimore. The ACLU chapter claims Maryland is unconstitutionally holding more than 200 juvenile offenders who are now adults under de facto sentences of life in prison without the possibility of parole because the state's governors have historically not granted parole to lifers.

U.S. District Judge Ellen L. Hollander has allowed the ACLU's case to proceed toward trial on the claim that Maryland has violated the Eighth Amendment. Hollander said the inmates have sufficiently alleged that parole for juvenile lifers is illusory in the state.

The case, *Maryland Restorative Justice Initiative et al. v. Gov. Larry Hogan et al.*, No. 1:16-cv-01021-ELH, is in settlement conference.

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