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Eighth Amendment to play major role in upcoming high court term

With the U.S. Supreme Court beginning its new term, it is time to ask what we can look forward to in the area of criminal procedure.

SCOTUSblog, the authoritative website for all things Supreme Court, recently noted that of the 34 cases the court had agreed to review as of August, five involved Eighth Amendment issues. SCOTUSblog predicts that this will be the biggest Eighth Amendment year at the court since it brought back the death penalty in *Gregg v. Georgia* in 1976.

Certainly the court ended its previous term by showing that the Eighth Amendment was very much on its mind. On the very last day it issued a death penalty decision affirming Oklahoma's use of a drug cocktail in *Glossip v. Gross*.

In that 5-4 decision, the court showed major fissures. Justices Stephen G. Breyer and Ruth Bader Ginsburg in dissent announced that they now "believe it highly likely that the death penalty violated the Eighth Amendment." On the other hand, Justice Antonin G. Scalia in a concurrence countered that it was time to reconsider the court's whole line of Eighth Amendment decisions dating back to *Trop v. Dulles* in 1958.

The five Eighth Amendment cases on the docket raise a variety of issues. Two of them deal with whether juries in death penalty cases must be affirmatively instructed that mitigating circumstances do not have to be proved beyond a reasonable doubt (*Kansas v. Gleason* and *Kansas v. Carr*).

One deals with a variety of issues concerning constitutional limitations on how a jury can impose a death sentence (*Hurst v. Florida*). Another concerns *Batson v. Kentucky* issues on how the use of peremptory challenges in death cases might be affected by the Eighth Amendment (*Foster v. Chatman*).

The last case concerns the court's 2012 ruling in *Miller v. Alabama*, which held that mandatory "life without parole" for juveniles violates the Eighth Amendment. The court will now decide whether that decision applies retroactively (*Montgomery v. Louisiana*). (You may recall that the Illinois Supreme Court last year held in *People v. Davis*, 2014 IL 115595, that *Miller* was retroactive.)

But the renewed interest in Eighth Amendment issues does not come only from the U.S. Supreme Court. A recent case from the 1st District Appellate Court shows the Illinois Appellate Court confronting another punishment problem. Take a look at *People v. Collins*, 2015 IL App (1st) 131145 (Sept. 16, 2015).

Charles Collins was found guilty of possession of a controlled substance with the intent to deliver. He had two prior Class X drug convictions, in 1998 for delivery of a controlled substance and in 2007 for possession with intent to deliver. Because this was his third Class X conviction, he was sentenced under the Habitual Criminal Act to mandatory natural life imprisonment.

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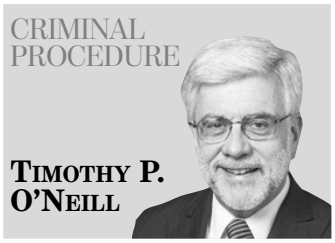
On appeal, Collins argued that a sentence of mandatory natural life for three non-violent offenses violated both the proportionate penalties clause of the Illinois Constitution and the Eighth Amendment.



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In a 2-1 decision, the court affirmed the sentence.

Although agreeing that a "mandatory life sentence on a non-violent offender is harsh and we question the wisdom of the legislature in this regard," the court nonetheless held that the sentence did not violate either the U.S. or the Illinois Constitution.

Justice Michael B. Hyman filed an impassioned dissent. He began by noting that out of approximately 1,600 Illinois prisoners currently serving natural life, Collins was one of only 10 serving it based on non-violent offenses.

And Hyman noted that although a non-violent offender, Collins was thus serving "the same sentence imposed on a thrice-convicted ruthless murderer."

Hyman cites the Illinois Supreme Court's recognition that the purpose of the Habitual Criminal Act is to "protect our society from habitually violent and heinous criminals." Thus, imposing mandatory life for Collins' non-violent offenses serves no purpose connected with that statute.

The dissent also discusses the realities of actually serving a natural life sentence. Quoting Justice Anthony M. Kennedy, it observes: "Life without parole is the second most severe penalty permitted by law [yet] it shares some characteristics with death sentences. ... [T]he sentence alters the offender's life by a forfeiture that is irrevocable. It deprives the convict of the most basic liberties without giving hope of restoration." *Graham v. Florida*, 560 U.S. 48, 69-70 (2012).

Hyman even cites an executive director of a death penalty advocacy group who admitted that an argument could be made that life in prison is the worst kind of punishment. In the words of one inmate serving life without parole, it is "like putting me in a room with a tiger and letting him take bite after bite out of me, a little at a time."

The standard for a disproportionate sentence in Illinois is whether it is "cruel, degrading or so wholly disproportionate to the offense as to shock the moral sense of the community."

Hyman noted that even the judge at sentencing admitted that he was only imposing a life sentence on Collins because the law forced him to. The crime had nothing to do with murder, violence or guns. Therefore, mandatory life in this situation thus does not comport with constitutional principles.

Hyman's closing lines need to be quoted in full: "To let Collins' sentence stand diminishes the very constitutional protections the courts are charged with enforcing and jeopardizes the rights of all of us. Whenever the rights of one individual have been invaded, the rights of all are in danger. The hope and promise of justice depends on the courts intervening in their role as guardian of constitutional rights when, as here, one of those rights has been breached."

It is possible that the U.S. Supreme Court's coming term may assist future inmates in the same position as Charles Collins.

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