

IN THE
SUPREME COURT OF THE UNITED STATES

DONALD P. ROPER, SUPERINTENDENT,
POTOSI CORRECTIONAL CENTER,
Petitioner,

v.

CHRISTOPHER SIMMONS
Respondent.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF MISSOURI

BRIEF FOR RESPONDENT

Summary of the Case

On September 9, 1993, 17-year-old Christopher Simmons and his friend Charles Benjamin broke into the house of Mrs. Shirley Crook in St. Louis, planning to burglarize it. Mrs. Crook confronted the boys and recognized one of them as a youth with whom she had been previously involved in an automobile accident. Simmons, who had bragged about his ability to get away with severe crimes due to his age, panicked upon discovering the identity of Mrs. Crook and subsequently silenced her by binding her with duct tape, placing her in the back of her minivan, and driving to a county park. There, he pushed her into the Meramec River and watched with Benjamin while she drowned.

After his arrest the following day, Simmons cooperated with authorities and confessed to the murder, allowing police to videotape his confession and agreeing to act out part of the crime in their presence. Despite testimonies of family and friends explaining the loving relationships Simmons held with many of them, and the fact that Simmons had had no prior criminal convictions, the jury focused solely on the brutality and aggravating circumstances of the crime and deliberated for less than an hour before sentencing him to death.

Following conviction in trial court, Simmons appealed and was represented by a new defense counsel. He was examined by a top psychologist who declared that his pronounced immaturity and subsequent behavior was substantially influenced by childhood traumas. Before his birth, Simmons' parents separated and he was subject to growing up with his natural mother and stepfather, Bob Hayes, who proved to be both a negligent and abusive parent. While his mother watched, his drunken stepfather physically and verbally assaulted him – in many instances hitting him, throwing objects at him, chasing him off the property, or throwing him against the walls. One particularly terrifying recollection involved Mr. Hayes tying Simmons tightly to a tree and leaving him alone for hours at a time. ¹

Despite his abusive home environment, Simmons remained an average student in school as a child. In the absence of a role model, however, his grades and good behavior soon evaporated as he grew into adolescence. Like many young teens, Simmons was pressured into using drugs and

alcohol as he spent more and more time away from home. Struggling to cope with his troubled past, Simmons developed a substance abuse problem, which evidence suggests quite likely affected the development of his brain and compounded natural adolescent immaturity with instability and confusion. As a result of this turmoil, Simmons would eventually be diagnosed with schizotypal personality disorder.¹

However, the court upheld his sentence and Simmons awaited death by lethal injection set for May 2002. Just before his execution date, the U.S. Supreme Court issued its ruling in the death penalty case *Atkins v. Virginia*, which prohibited the execution of the mentally retarded on the grounds that it violated the Eighth Amendment ban on “cruel and unusual punishment.” The decision compelled the Missouri Supreme Court to review Simmons’ case, and ultimately resulted in the reversal of Simmons’ punishment in favor of life in prison.

Questions Addressed

Whether the State of Missouri has the right to overrule its decision based on precedents set in the Supreme Court of the United States dating back to 1989, in response to “evolving standards of decency.”

Whether the imposition of the death penalty on a 17-year-old offender constitutes “cruel and unusual punishment” as prohibited by the Eighth and Fourteenth Amendments to the Constitution of the United States.

Argument

In *Furman v. Georgia* in 1972, the Supreme Court struck down the death penalty as unconstitutional due to the improper method of administration. The Court addressed the inconsistency with which it was imposed, and pointed out that statutory guidelines were necessary to prevent discrimination. Following this decision, all 36 states that had authorized the death penalty halted executions while safeguard circumstances were put into place, involving changes in the statutes of Georgia, Ohio, and Texas. Once legislators had set these conditions in place, the Georgia Supreme Court ruled against Troy Leon Gregg and sentenced him to death for armed robbery and murder, concluding that the conditions set forth were met and the sentence administered appropriately. The Supreme Court upheld Georgia's decision, setting the precedent that the execution of offenders is justified under a number of specific circumstances. It is in a similar manner that Missouri originally concurred on the execution of Christopher Simmons following the ruling in *Gregg v. Georgia*.

In a similar case, as a result of *Furman v. Georgia*, the Ohio death penalty statute provided that the death penalty could be imposed once the offender is found guilty of aggravated murder with at least "one of seven specified aggravating circumstances" (*Ohio Death Penalty Statue*). However, in Ohio, an exception is permissible when any of three certain conditions are supported with conclusive evidence – one of which involves the psychosis or mental deficiency of the offender at the time of the crime. Sandra Lockett, sentenced to death by the Ohio Supreme Court, challenged the validity of her conviction on the grounds that the judge was, under Ohio statute, unable to fully consider any mitigating factors as required by the Eighth and Fourteenth Amendments. These included any aspects of the character or condition of the offender. The Supreme Court agreed, and the decision of Ohio was overturned. Similarly, the consideration, or lack thereof, of mitigating factors presented by the petitioner in *Eddings v. Oklahoma* resulted in the repeal of the death sentence as imposed by the Oklahoma Supreme Court.

In the State of Missouri, the Supreme Court, also following the precedent set in *Gregg v. Georgia*, found that Christopher Simmons met the circumstances required to justify the imposition of the death penalty. However, his execution was postponed until the decision of

Atkins v. Virginia compelled the Court to review his case. While the petitioner may question the authority of the Missouri Supreme Court to overturn its decision based on a Supreme Court case with seemingly different circumstances, it is clear that the precedent of a State Court's ruling being overturned has already been established, and in fact *Atkins v. Virginia* is extremely relevant here in ways that will soon be described. As Christopher Simmons has been convicted of murder in Missouri, it is essential to consider all mitigating circumstances in this case.

In 1986, the Supreme Court upheld the death sentence of Kevin Stanford, who was 17 years old at the time he committed murder in Kentucky. After *Stanford v. Kentucky* was decided, States could execute any offender over the age of 16. This decision reflects the ruling in *Thompson v. Oklahoma* the previous year, where Thompson was kept from the death penalty at age 15 as a result of his youth. It was noted that this case did not establish a minimum age for the death penalty. The fact that the majority of states that permit the death penalty authorize it for crimes committed above the age of 16 was influential. Dissenting opinions held that 22 out of the 37 states allowing for the death penalty refuse to impose it on 16-year-olds, and thus fulfill their "constitutional obligations to conduct proportionality analysis," taking into account any mitigating factors such as age.⁸

These dissenting opinions were not without precedent. Proportionality of punishment (with regard not just to the severity of the crime but any mitigating factors that are firmly supported with appropriate evidence) has been a strong influence in cases such as *Coker v. Georgia* (1977) and *Enmund v. Florida* (1982). Both were cases in which the pending decisions to execute the petitioner of the State Supreme Courts were reversed on the grounds of inconsistency with the Eighth Amendment (*Furman v. Georgia*). Acts of legislation as a result of the idea of proportional punishment reflect the nation's "evolving standards of decency" in this area (*Trop v. Dulles*). In this view, the Eighth Amendment cannot be considered a "static concept" that does not address issues in contemporary society. Contemporary society, of course, should be the foundation of modern rulings (thus *stare decisis* encourages ruling by the most recent decision in *Atkins v. Virginia*), and with contemporary society comes improved medical technology that helps us better our understanding of the human mind.

In 1986, the ruling of *Ford v. Wainwright* forbade the execution of mentally ill persons based on tests of competency administered to Ford; incidentally, it can be proven that at the time of the crime, Simmons' mind was not competent in specific areas of the brain to analyze his actions. More recently, Penry, who had proven his mental disability in Court, was tried twice in the State of Texas in 2001. Penry was sentenced to death originally, however the Supreme Court reviewed that decision and it was concluded that the jurors were under the impression they could not consider or give effect to the mitigating evidence presented, which, on the basis of *stare decisis*, was required following *Lockett v. Ohio* and *Eddings v. Oklahoma*. Penry was tried again. This time the jurors were informed that if any of the mitigating factors so presented cause any doubt toward the death penalty (in favor of a life sentence), they could answer 'no' to any of the three special criteria required to be met under Texas statute for the imposition of the death penalty. After being reminded that Penry would be a danger to society if released from custody, the jurors answered all three questions 'yes' and the death sentence was upheld.

However, recent medical research conducted by top professionals has concluded that the developing brain is most susceptible to change during adolescence than at any other stage in life.³ Therefore, it makes sense that teenagers such as Christopher Simmons be placed in strict correctional facilities and intense treatment programs in order to help them direct their life and become a productive member of American society, not altogether remove them from it.

The correlation between *Atkins v. Virginia* and Christopher Simmons' pending case is clearly evident from detailed analysis. In *Atkins v. Virginia*, the Court's decision pronounced that "an execution of mentally retarded criminals is 'cruel and unusual punishment' prohibited by the Eighth Amendment" of the Constitution. In the decision, it is stated that "the severity of the appropriate punishment necessarily depends on the offender's culpability." Mentally retarded individuals possess "deficiencies that do not warrant an exemption from criminal sanctions, but diminish their personal culpability." These deficiencies included the fact that "mentally retarded persons frequently know the difference between right and wrong and are competent to stand trial, but, by definition, [they] have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical

reasoning, to control impulses, and to understand others' reactions."² These deficiencies will parallel those found in the Court's reexamination of the respondent, Christopher Simmons.

Mr. Simmons' initial counsel failed to address deficiencies and circumstances that would exempt him from the death penalty according to the precedent set by *Atkins v. Virginia*.¹ First of all, juveniles, such as Mr. Simmons, are undergoing developmental changes that contribute greatly to their "diminished capacities." Scientific research has announced that the brain of all adolescents does not fully develop until their early twenties.³ These changes mostly occur in the prefrontal cortex area of the brain. This is a critical area that controls impulses and emotions. Most importantly, this region enables one to understand the consequences of their behavior. This ability enables one to make rational and logical decisions. These facts support the opinion that the "the adolescent brain is similar therefore to the manifestation of mental disability within the adult brain." These physiological differences are further magnified by deplorable experiences in one's past.⁴ Researchers discovered that the circumstances of two-thirds of juveniles sentenced to death contained turmoil and physiological disorders, low IQ, and substance abuse.⁴ Mr. Simmons's IQ score of 88 is under average.⁷

His past is greatly flooded with memories of turmoil. He was raised in an abusive, alcoholic, and very dysfunctional family environment, which caused him to seek the aid of alcohol and cannabis dependence.⁵ His stepfather was abusive both mentally and physically, and treated him with the utmost disrespect and indecency. Simmons was constantly insulted for anything possible and, to make matters more depressing for Simmons, had a mother that was too afraid to speak up and defend him. His far from happy home-life led him to run away on many occasions as the years went on. His lengths of absences increased from days to weeks, in which he eventually became acquainted with those that introduced him regularly to drugs including cannabis.¹

An adult with a damaged prefrontal cortex is not subject to the death penalty, as evident from *Atkins v. Virginia*. Therefore, we should not treat adolescents as adults, especially when their physiological developments are not equal. Restricted treatment of adolescents is evident by their exemption from voting, alcohol consumption, and marriage.⁵ Therefore, they should be treated differently when punishment is assigned. Since the adolescent brain is far less advanced than its

adult counterpart, it is not reasonable to impose like punishment, especially since an adolescent is more capable to change and reform their wrong ways.³

Furthermore, the “diminished capacities” that result from the developing adolescent brain are yet further magnified by a psychiatric illness. Examination after Mr. Simmons’s sentencing by Dr. Robert Smith, a clinical psychologist, revealed that the respondent possesses schizotypal personality disorder.¹ This is a serious disorder “distinguished by a pervasive pattern of social and interpersonal deficits marked by acute discomfort and a reduced capacity for close relationships and cognitive and perceptual distortions.”¹ These concerns closely parallel those found in mentally retarded individuals. Deficiency occurs in behavior and thought patterns resulting in distorted thinking and strange behavior. Individuals often seek treatment for their symptoms such as anxiety, depression, stress, or negative emotions. Psychotic episodes are also associated with this chronic disorder. These dangerous episodes may last several minutes or hours.⁶ Therefore, the use of the precedent established in *Atkins v. Virginia* in relation to Mr. Simmons would be reasonable.

Research has also proven that, while no definite correlation exists, cannabis use can amplify the effects of schizotypy. Also, in some cases, it has been proven that regular cannabis use can lead to schizotypal symptoms. The University of Hawaii has recently completed a study in which this has been seen in persons around the age of 21.⁹

One can conclude that adolescents, especially those of Mr. Simmons’ circumstances, possess cognitive “diminished capacities.” Imposing the death penalty punishment upon these individuals constitute “cruel and unusual punishment” forbidden by the Eighth Amendment of the Constitution.

In addition, waves of legislation regarding the states’ statutes for the death penalty undoubtedly reflect the nation’s “evolving standards of decency” (*Trop v. Dulles*). Many states raised the minimum age to 18, including New York, Indiana, and Kentucky in the mid-1990s. The Virginia Supreme Court relied on *Penry v. Lynaugh* in sentencing him to death, yet the Supreme Court held that “proportionality review under such evolving standards should be informed by objective

factors to the maximum possible extent, the clearest and most reliable of which is the legislation enacted by the country's legislatures." It is the consistency of the direction of change that is notable in proving that society views the mentally retarded as less culpable than normal adults, in connection with the "evolving standards of decency" (*Trop v. Dulles*) that connect severity of punishment with level of culpability.

All together, legislatures in 31 U.S. states forbid the imposition of the death penalty on juveniles (those offenders under the age of 18). Likewise, 31 states prohibit the execution of the mentally retarded. These numbers support the existence of a national consensus towards restricting the death penalty, as well as the connection between youth and moral culpability. In the 15 years following the ruling in *Stanford v. Kentucky* (the decision that allowed states to reinstate the death penalty for juveniles) no state has moved to do so, although many states do try them as adults within their jurisdictions. Moreover, states that *do* allow the execution of juveniles have hardly ever done so: the ban is simply accepted without the need to pass new legislation. Thus, the execution of juveniles is very rare in the United States. The execution of Simmons would in fact be the first ever under Missouri jurisdiction, putting the State at risk in the eyes of not only the nation, but also the rest of the world, as operating contrary to the "evolving standards of decency" that exist in global society. This is because the practice of imposing the death penalty on juveniles is discouraged not only in the United States but worldwide as well. Virtually every other nation around the globe (with the exception of Somalia) consistently rejects the juvenile death penalty as punishment for those offenders that have not yet reached the age of 18.

Also, whatever precedent that may have been established in *Penry* is effectively erased with the most recent ruling in *Atkins v. Virginia*, and *stare decisis* should compel the Court to strongly focus on this latest precedent and rule accordingly. Due to the circumstances of this case, all mitigating factors such as the respondent's age and mental condition must be considered and given effect as laid out by precedents, thus proving that the Supreme Court's overruling of *Penry* in *Atkins* effectively justifies the Missouri Supreme Court overturning its original decision to impose the death penalty on 17-year-old, mentally troubled Christopher Simmons

Conclusion

Based on precedents set in the last few years and relationships to similar cases in which the petitioner was excused from death due to mitigating circumstances such as personal culpability, the decision of the Missouri Supreme Court should stand affirmed. In addition, the strong evidence of both a national and international consensus against the juvenile death penalty reflects the “evolving standards of decency” of human society in general. Thus the execution of Christopher Simmons violates the principles of the Eighth and Fourteenth Amendments to the Constitution and curtails his rights as an American citizen.

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Precedents Used:

Tropp v. Dulles

Furman v. Georgia

Gregg v. Georgia

Coker v. Georgia

Lockett v. Ohio

Eddings v. Oklahoma

Ford v. Qainwright

Thompson v. Oklahoma

Penry v. Lynaugh/Johnson

Atkins v. Virginia

Sources

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4. <http://www.internationaljusticeproject.org/pdfs/juvBrainDev.pdf>
5. American Bar Association <http://www.abanet.org/crimjust/juvjus/simmons.html>
6. <http://www.mentalhealth.com/dis/p20-pec03.html>
7. <http://www.abanet.org/crimjust/juvjus/simmonsaiua.html>
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9. *Symptoms of schizotypy precede cannabis use* (<http://www.science direct.com>)