

lenge to punishment goes to the length rather than the seriousness of the offense, the choice is necessarily subjective. Therefore, the *Rummel* rule appeared to be that states may punish any behavior properly classified as a felony with any length of imprisonment purely as a matter legislative grace.²²² The Court dismissed as unavailing the factors relied on by the defendant. First, the fact that the nature of the offense was nonviolent was found not necessarily relevant to the seriousness of a crime, and the determination of what is a “small” amount of money, being so subjective, was a legislative task. In any event, the state could focus on recidivism, not the specific acts. Second, the comparison of punishment imposed for the same offenses in other jurisdictions was found unhelpful, differences and similarities being more subtle than gross, and in any case in a federal system one jurisdiction would always be more severe than the rest. Third, the comparison of punishment imposed for other offenses in the same state ignored the recidivism aspect.²²³

Rummel was distinguished in *Solem v. Helm*,²²⁴ the Court stating unequivocally that the Cruel and Unusual Punishments Clause “prohibits not only barbaric punishments, but also sentences that are disproportionate to the crime committed,” and that “[t]here is no basis for the State’s assertion that the general principle of proportionality does not apply to felony prison sentences.”²²⁵ Helm, like Rummel, had been sentenced under a recidivist statute following conviction for a nonviolent felony involving a small amount of money.²²⁶ The difference was that Helm’s sentence of life imprisonment without possibility of parole was viewed as “far more severe than the life sentence we considered in *Rummel v. Estelle*.”²²⁷ Rummel, the Court pointed out, “was likely to have been eligible for parole within 12 years of his initial confinement,” whereas Helm had only the possibility of executive clemency, characterized by the Court as “nothing more than a hope for ‘an *ad hoc* exercise of clemency.’”²²⁸ The *Solem* Court also spelled out the “objective criteria” by which proportionality issues should be judged: “(I) the gravity of the offense

²²² In *Hutto v. Davis*, 454 U.S. 370 (1982), on the authority of *Rummel*, the Court summarily reversed a decision holding disproportionate a prison term of 40 years and a fine of \$20,000 for defendant’s possession and distribution of approximately nine ounces of marijuana said to have a street value of about \$200.

²²³ *Rummel*, 445 U.S. at 275–82. The dissent deemed these three factors to be sufficiently objective to apply and thought they demonstrated the invalidity of the sentence imposed. *Id.* at 285, 295–303.

²²⁴ 463 U.S. 277 (1983). The case, like *Rummel*, was decided by a 5–4 vote.

²²⁵ 463 U.S. at 284, 288.

²²⁶ The final conviction was for uttering a no-account check in the amount of \$100; previous felony convictions were also for nonviolent crimes described by the Court as “relatively minor.” 463 U.S. at 296–97.

²²⁷ 463 U.S. at 297.

²²⁸ 463 U.S. at 297, 303.