

EXAMINERS' ANALYSIS OF QUESTION NO. 14

The constitutional provision common to all scenarios is the 8th Amendment's prohibition against cruel and unusual punishment. The amendment states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." (Emphasis added.) The amendment's prohibition is made binding on the states through the 14th Amendment. See *Furman v Georgia*, 408 US 238, 239 (1972).

United States Supreme Court precedent has explained that juveniles do not stand in the same shoes as adults when either the death penalty or non-paroleable life sentences are imposed, nor more generally regarding sentencing in the broader view. See *Roper v Simmons*, 543 US 551 (2005), *Graham v Florida*, 560 US 48 (2010), *Miller v Alabama*, 567 US _____; 132 S Ct 2455 (2012). Points from this trilogy of cases include, first, that the 8th Amendment's prohibition applies with added force where the sentences imposed are the highest form of punishment under a state's sentencing law. Second, to be consonant with the 8th Amendment, a proper sentence must include an analysis of the nature of the offense and the circumstances of offender, and that a juvenile's attendant characteristics of youth are central aspects of the offender's circumstances. *Roper* summarized the distinction between juvenile and adult offenders as (1) juveniles, by way of lack of their maturity and an underdeveloped sense of responsibility, tend to engage in impetuous and ill-considered actions, (2) juveniles are more vulnerable or susceptible to negative influence and outside pressures, and (3) the character of the juvenile is not as well formed as an adult's. *Roper*, 543 US at 569-570. Relatedly, the cases noted that a sentence which precludes the natural maturation of the juvenile's mind and corresponding development and behavior as a sentencing or release consideration runs afoul of 8th Amendment precepts.

Applying these principles to the various scenarios yields the conclusion that none of the sentences imposed would be upheld.

Jimmy :

In *Roper, supra*, the Court held that the imposition of the death penalty on a defendant convicted of murder before that defendant's 18th birthday violated the 8th Amendment's ban on cruel and unusual punishment. The Court explained that the 8th Amendment's prohibition has added force when the death penalty, obviously the most severe sanction, is in play. Placing a juvenile on par with an adult and then allowing the irrevocable sentence of death could not be countenanced. The facts presented state Jimmy was 16 when the crime was committed. This brings his sentence within the embrace of *Roper's* holding. Given his youth, the death penalty simply was not an option the court could employ in sentencing 16-year-old Jimmy. Such a sentence would not be upheld.

Betty:

In *Graham, supra*, following *Roper*, the Court invalidated on 8th Amendment grounds, a non-paroleable life sentence imposed for a non-homicide crime committed before the defendant's 18th birthday. Following *Roper*, the Court reasoned a non-paroleable life sentence, the second most severe sentence (and in some jurisdictions like Michigan, the most severe sentence), was tantamount to a death sentence for an adult in its preclusive nature. The *Graham* decision also discussed that the harshest sentence should be reserved for the worst combination of offense and offender, noting that a juvenile defendant would be hard-pressed to qualify as an irredeemable worst offender.

Harvey:

The Court continued the theme described in *Roper* and *Graham* in *Miller v Alabama*, 567 US _____; 132 S Ct 2455 (2012). *hailer* found wanting a state law requirement that one convicted of first-degree murder--no matter if adult or juvenile--was mandated to receive, absent the exercise of discretion, life imprisonment without parole. Harvey's scenario represents precisely that scenario condemned to unconstitutionality. Where, as here, a court is mandated to impose the same life imprisonment without parole sentence on adult or juvenile alike, the significant and attendant circumstances of youth are precluded from consideration by the sentence. This runs afoul of the 8th Amendment's command_____ as articulated in case law--to

tailor a particular sentence to the circumstances of the crime and the makeup of the offender, about whom age is a significant factor.

For the reasons stated, none of the sentences imposed would pass 8th Amendment muster and are therefore constitutionally invalid. Where, as in all three scenarios, consideration of a juvenile's diminished culpability and heightened capacity for change is foreclosed, the 8th Amendment is not satisfied.