

SUPREME COURT OF NEVADA

State v. Boston

2015 NV 98 · No. 62931 · Decided December 31, 2015

SUMMARY

The Nevada Supreme Court held that *Graham v. Florida* applies to aggregate sentences imposed on juvenile nonhomicide offenders when those sentences are the functional equivalent of life imprisonment without parole. The court also held that *Graham* established good cause and actual prejudice excusing the respondent’s untimely and successive post-conviction petition. Although it agreed that the sentence was unconstitutional under *Graham*, the court vacated the order granting habeas relief and remanded because Assembly Bill 267 provided the respondent with parole eligibility after 15 years.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Cherry, J.; Hardesty, C.J.; Parraguirre, J.; Douglas, J.; Gibbons, J.
JURISDICTION	Nevada
DECIDED	December 31, 2015
DOCKET	62931
DISPOSITION	vacated
PROCEDURAL POSTURE	The State appealed from a district court order granting Boston's post-conviction petition for a writ of habeas corpus and ordering a new sentencing hearing.
STANDARD OF REVIEW	The opinion does not expressly state a standard of review.
PRECEDENTIAL VALUE	Published, en banc opinion of the Supreme Court of Nevada.
PARTIES	The State of Nevada v. Andre D. Boston

TOPICS

- cruel and unusual punishment
- sentencing
- state post-conviction relief
- post-conviction relief
- statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether *Graham v. Florida* prohibits an aggregate sentence imposed on a juvenile nonhomicide offender when the sentence is the functional equivalent of life imprisonment without the possibility of parole.
2. Whether *Graham* provided good cause and actual prejudice to overcome Nevada's timeliness and successive-petition procedural bars.
3. Whether A.B. 267 applies retroactively to aggregate sentences imposed for nonhomicide offenses committed by juveniles and provides the meaningful opportunity for release required by *Graham*.
4. Whether the district court's order granting Boston's habeas petition should stand in light of A.B. 267.

HOLDINGS

1. *Graham v. Florida* applies to aggregate sentences imposed on juvenile nonhomicide offenders when the aggregate sentence is the functional equivalent of life without the possibility of parole.
2. *Graham* supplied good cause and actual prejudice sufficient to overcome the procedural bars applicable to Boston's untimely and successive habeas petition.
3. *Graham* applies retroactively on collateral review because it announced a new constitutional rule prohibiting a specific punishment for a class of persons.
4. A.B. 267 applies retroactively to aggregate sentences for nonhomicide offenses committed by juveniles and makes Boston eligible for parole after 15 years, thereby providing the meaningful opportunity for release required by *Graham*.

KEY QUOTATIONS

"We therefore hold that a district court violates the prohibition of cruel and unusual punishment when it sentences a nonhomicide juvenile offender to the functional equivalent of life without the possibility of parole." (10)

*"The Legislature has provided all that *Graham* requires—a meaningful opportunity for Boston to obtain release within his lifetime."* (13)

FACTUAL BACKGROUND

Boston committed multiple nonhomicide offenses in 1983 when he was 16 years old. A jury convicted him of kidnapping, sexual assault, robbery, attempted dissuading of a victim or witness, burglary, lewdness with a minor, assault, and battery, many involving deadly-weapon enhancements. The district court imposed 14 life sentences with the possibility of parole, followed by a consecutive 92-year term, requiring approximately 100 years of incarceration before parole eligibility.

PROCEDURAL HISTORY

Boston was convicted by a jury in 1988 and received 14 consecutive life sentences with the possibility of parole plus a consecutive 92-year term. His direct appeal was dismissed, and earlier post-conviction proceedings were

unsuccessful. In 2011, he filed an untimely and successive habeas petition invoking *Graham v. Florida*. The district court granted relief after an evidentiary hearing, concluding that his aggregate sentence was the functional equivalent of life without parole and that good cause and actual prejudice excused the procedural bars. While the State's appeal was pending, the Nevada Legislature enacted A.B. 267, which made Boston parole-eligible after 15 years; the Supreme Court vacated the district court's order and remanded with instructions to deny the petition.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The case was remanded to the district court to deny Boston's post-conviction habeas petition because A.B. 267 had already provided him a meaningful opportunity for release.

CASES CITED

- *Graham v. Florida*, *Graham v. Florida*, 560 U.S. 48 (2010)
- *Boston v. State*, Docket No. 19607 (Order Dismissing Appeal, October 24, 1989)
- *Boston v. State*, Docket No. 21871 (Order of Remand, September 30, 1991)
- *Boston v. State*, Docket No. 26034 (Order Dismissing Appeal, October 7, 1994)
- *Boston v. State*, Docket No. 58216 (Order Affirming in Part, Reversing in Part and Remanding, February 3, 2012)
- *Pellegrini v. State*, 117 Nev. 860, 34 P.3d 519 (2001)
- *Bejarano v. State*, 122 Nev. 1066, 146 P.3d 265 (2006)
- *Hogan v. Warden*, 109 Nev. 952, 860 P.2d 710 (1993)
- *Teague v. Lane*, 489 U.S. 288 (1989)
- *Colwell v. State*, 118 Nev. 807, 59 P.3d 463 (2002)
- *Moore v. Biter*, 725 F.3d 1184 (9th Cir. 2013)
- *Roper v. Simmons*, 543 U.S. 551 (2005)
- *People v. Caballero*, 282 P.3d 291 (Cal. 2012)
- *Floyd v. State*, 87 So. 3d 45 (Fla. Dist. Ct. App. 2012)
- *Bunch v. Smith*, 685 F.3d 546 (6th Cir. 2012), cert. denied sub nom. *Bunch v. Bobby*, 133 S. Ct. 1996 (2013)
- *State v. Kasic*, 265 P.3d 410 (Ariz. Ct. App. 2011)
- *United States v. Aiello*, 864 F.2d 257 (2d Cir. 1988)
- *Naovarath v. State*, 105 Nev. 525, 779 P.2d 944 (1989)