

>>> THE SECOND CASE IS GRIDINE
V. THE STATE OF FLORIDA.
YOU MAY PROCEED.

>> MAY IT PLEASE THE COURT,
I'M GAIL ANDERSON REPRESENTING
MR. †SHIMEEKA GRIDINE.

HE WAS 14 YEARS OLD WHEN HE
COMMITTED ATTEMPTED
FIRST-DEGREE MURDER, TO WHICH
HE PLED GUILTY AND FOR WHICH
HE RECEIVED A 70-YEAR SENTENCE
WITH A 25-YEAR MINIMUM
MANDATORY.

>> THIS CASE INVOLVES THE
DISCHARGE OF A FIREARM, A
SHOTGUN?

>> YES.

>> THIS IS THE CASE WITH A
MANDATORY MINIMUM.

>> 25 YEAR MINIMUM.

THANK YOU.

AND HAS 25-YEAR SENTENCE ON
SECOND COUNT OF ATTEMPTED
ARMED ROBBERY.

>> ON THE SENTENCE, THE DOC
AND THE DJJ DID THEIR
PRESENTENCE INVESTIGATION AND
RECOMMENDED -- AND TALKING
ABOUT GROSSLY DISPROPORTIONATE
SIX-YEAR YOUTHFUL OFFENDER
SENTENCE FOR THE 14-YEAR-OLD.
IF THE JUDGE HAD FOLLOWED THAT
RECOMMENDATION, HOW COULD HE
FOLLOW IT AND STILL IMPOSE
WITH THE 25-YEAR MANDATORY
MINIMUM OUT THERE?

>> I DON'T KNOW.

>> TO ME, THAT JUST JUMPED OUT
TO -- AND WE DON'T HAVE THE
PSI AND THE RECORD, WHAT WE'RE
REALLY TALKING ABOUT HERE IS A
COMPLETE †--

HERE'S THE DOC AND THE DJJ
SAYING THIS 14-YEAR-OLD COULD
SERVE A SIX-YEAR SENTENCE AND
INSTEAD HE GETS FROM THE JUDGE
A 70-YEAR SENTENCE.

>> RIGHT.

>> BUT YOU'RE CONCEDED HE
NEEDS TO HAVE -- I THINK I'M

HEARING HE NEEDS AT LEAST A 25-YEAR SENTENCE BECAUSE OF THE MANDATORY MINIMUM?

>> YEAH, I COULDN'T -- I DIDN'T RAISE ANY CHALLENGE TO THE 25-YEAR MANDATORY MINIMUM.

>> WE DON'T KNOW THE ANSWER WHETHER ANOTHER JUSTICE -- SAY IT WAS JUSTICE LABARGA, WHETHER HE WAS THE JUDGE IN PALM BEACH COUNTY, COULD HAVE GIVEN THIS KID A CHANCE OF A SIX-YEAR YOUTHFUL OFFENDER SENTENCE?

>> I DON'T KNOW IF THE YOUTHFUL OFFENDER STATUTE OVERRIDES THE MINIMUM MANDATORY?

>> YES.

>> IT DOES.

>> THE JUDGE HAS TO MAKE THE FINDINGS THAT ARE NECESSARY TO GO DOWN THAT ROUTE, RIGHT? A JUDGE IS REQUIRED TO GIVE A YOUTHFUL OFFENDER SENTENCE.

>> NO, NO.

>> BUT THE DISCRETIONARY DETERMINATION, THE JUDGE MAKES THAT CALL THAT THE DEFENDANT WILL BE PUT IN THAT CATEGORY.

>> YES, AND DEFENSE COUNSEL ASKED FOR YOUTHFUL OFFENDER SENTENCE AND IT WAS NOT GIVEN.

>> YOU ARE NOT DISPUTING LAW WITH RESPECT TO THAT?

>> NO, I'M NOT.

>> GOING BACK TO MY QUESTION TO MR. FLUCK IN THE PREVIOUS CASE.

>> YES.

>> AND I'M TRYING TO GET A FEEL FOR WHAT IS CONSIDERED TO BE EXCESSIVE AND WHAT'S NOT BECAUSE CREATING A BRIGHT LINE TEST, AS THE JUDGE MENTIONED DOWN BELOW IN THE DCA, IS NOT WORKABLE.

ASSUMING THE 25-YEAR MANDATORY MINIMUM REMAINS INTACT, WOULD A 25-YEAR MANDATORY MINIMUM

SENTENCE -- AND ONCE HE
COMPLETES THAT, THE
POSSIBILITY OF PAROLE, WHERE
HE'S GOING TO BE INTERVIEWED
EVERY SO OFTEN TO SEE, WOULD
THAT BE IN LINE WITH GRAHAM?
>> YES, I THINK IT WOULD.
>> SO THE MANDATORY -- SO 25
YEARS, YOU DON'T REGARD THAT
TO BE EXCESSIVE FOR A JUVENILE
THAT IS 14?
>> IN MR. GRIDINE'S CASE, THE
REALITY IS HE HAS TO SERVE THE
25 YEARS.
>> MY READING OF FLORIDA LAW,
THERE ARE BASICALLY FOUR
STATUTES IN FLORIDA THAT
AFFECT SENTENCING.
ONE IS A 10-20, LIFE.
LIFE WOULD BE OUT IN THIS
CASE.
>> CORRECT.
>> GIVEN GRAHAM.
THE SECOND ONE IS AN OFFENDER
HAS TO SERVE 85%.
THAT'S PROBLEMATIC.
>> YES, IT IS.
>> IN THE GRAHAM SETTING.
>> YES.
>> THE THIRD ONE IS THE ONE
THAT DEALS WITH THE ACCRUAL OF
GAME TIME.
AND THE FOURTH ONE PROVIDES
ACCESS TO PAROLE REVIEW.
THOSE FOUR STATUTES.
OF THOSE FOUR, THE 85%
MANDATORY SENTENCING, YOU HAVE
TO SERVE 85% OF THE SENTENCE
BEFORE YOU QUALIFY TO BE
RELEASED.
THAT'S THE MOST PROBLEMATIC
ONE.
THE MANDATORY MINIMUM IS NOT A
PROBLEM.
>> NOT IN THIS CASE.
>> THE 85% IS THE PROBLEMATIC
ONE.
>> EVEN IF -- ASSUMING IF MR.
GRIDINE GOT -- HE HAS TO SERVE
THE 25 YEARS DAY FOR DAY.

HE GETS NO GAME TIME ON THAT.
AND ASSUMING HE GOT ALL THE
GAME TIME HE WAS ELIGIBLE FOR
IN THE REMAINDER OF THE
SENTENCE, HE WOULD BE 77 YEARS
OLD BEFORE HE WAS RELEASED.

>> RIGHT.

>> AND I THINK THAT, UNDER ANY
REASONABLE CONSTRUCTION, IS A
LIFE SENTENCE.

>> DOES IT MAKE ANY DIFFERENCE
IF THE 70 OR 25 WERE
CONSECUTIVE, A CONCERN?

>> WELL, I DON'T THINK THE TOP
RANGE, WHETHER IT'S 70 YEARS
OR 90 YEARS, IT'S A LIFE
SENTENCE.

>> EVEN IF HE DIDN'T HAVE THE
25-YEAR MINIMUM MANDATORY.
HE SIMPLY HAD THE SEVEN-YEAR
SENTENCE, THE ARGUMENT IS THAT
THIS SENTENCE VIOLATES THE
GRAHAM DECISION?

>> YES, YES.

>> WHAT DO YOU -- ARE YOU
AGREEING WITH MR. FLUCK THAT
THE MOST LOGICAL WAY TO COMPLY
WITH THE MANDATE OF THE UNITED
STATES SUPREME COURT, WHERE
THERE'S ESSENTIALLY A LIFE
SENTENCE, IS DEFINED THAT THE
PAROLE STATUTE AND THE 85% IS
UNCONSTITUTIONAL AS APPLIED IN
THIS CASE?

>> I DO AGREE WITH THAT.

>> LET'S SAY THIS JUDGE,
INSTEAD OF THE 70-YEAR
SENTENCE, IMPOSED A 40 YEARS
SENTENCE, THEN WHAT?

>> YOUR QUESTION IS WHETHER 40
IS EQUIVALENT?

>> WE DECIDED THE POSITION OF
THE PUBLIC DEFENDER -- DOES
THE 40-YEAR CASE WAIT TO COME
ALONG AND SEE WHAT HAPPENS
THERE, A BROAD PRONOUNCEMENT.

>> THAT HAS TO BE DECIDED IN
EACH CASE.

THE ISSUE HERE IS WHETHER 70
YEARS IS A LIFE SENTENCE.

>> AND IN LIGHT OF THE
REHABILITATION THAT THE COURT
SPEAKS OF.
HOW DO YOU JUMP FROM ZERO TO
40 AND SAY THERE'S A CHANCE
FOR REHABILITATION?
I DON'T QUITE GET IT.
>> I AGREE, YOUR HONOR, I WAS
SPEAKING TO THE PARTICULARS OF
THIS CASE.
I THINK†--
>>†I'M TALKING ABOUT THIS
CASE, TOO.
>> YOU COULD DEFINE A LIFE
SENTENCE AS A SENTENCE THAT
DOES NOT PROVIDE A MEANINGFUL
OPPORTUNITY FOR RELEASE BASED
UPON REHABILITATION AND
MATURITY.
>> MEANINGFUL OPPORTUNITY
DURING THE LIFETIME BUT NOT
MEANINGFUL OPPORTUNITY AFTER
10 YEARS OR 20 YEARS.
THERE'S NOTHING IN GRAHAM
THAT'S REMOTELY DEALING WITH
THAT.
>> IT DOESN'T SAY THAT, YOUR
HONOR.
>> MY CONCERN ABOUT THIS IS
THE LENGTH OF THE SENTENCE,
LIKE IN THE FIRST CASE IT'S 90
YEARS.
THIS CASE IS 70.
IF THE ONLY REMEDY IS YOU
DECLARE AS APPLIED THE PAROLE
STATUTE IS UNCONSTITUTIONAL
AND THE 85%.
DOESN'T THE FACT THAT SOME
PERSON HAS THE 70 YEARS
SENTENCE AFFECT WHEN THEY ARE
ACTUALLY GOING TO BE RELEASED?
IF YOU TAKE TWO IDENTICAL
DEFENDANTS, AND ONE DEFENDANT
HAS THE 70-YEAR SENTENCE AND
THE OTHER HAS THE 40-YEAR
SENTENCE, AND LET'S ASSUME
PAROLE WAS THERE, WOULDN'T
THAT AFFECT ADVERSELY WHETHER
THEY ARE RELEASED ANY TIME
BEFORE 50 YEARS OR?

>> MY UNDERSTANDING -- I'M NOT AN EXPERT ON PAROLE.
>> NONE OF US ARE.
>>†MY UNDERSTANDING IS THE PAROLE COMMISSION HAS RULES.
>> I ALWAYS THINK OF "SHAWSHANK REDEMPTION" WHEN YOU SAY PAROLE.
YOU GO THERE AND THEY SAY, "NO" UNTIL YOU ARE TOO OLD.
>> MY UNDERSTANDING, THE PAROLE COMMISSION HAS RULES REGARDING WHEN SOMEONE CAN BE CONSIDERED FOR PAROLE, AS MR.†LUCK EXPLAINED, AND IF DENIED, THEY CAN REAPPLY CERTAIN TIME INTERVALS.
I WOULD THINK THAT WOULD BE THE SAME FOR ALL JUVENILE DEFENDANTS REGARDLESS OF WHETHER IT'S 40 OR 70 YEARS.
>> WE WOULDN'T EFFECT THE SENTENCE, THE LENGTH OF THE SENTENCE, THE TOP END OF THE SENTENCE.
>> NO, YOUR HONOR.
I DON'T THINK THAT COMES INTO PLAY.
>> IF THERE'S ELIGIBILITY FOR PAROLE?
>> CORRECT.
>> YOU SAID, THAT DOES THE LEAST DAMAGE TO THE TRIAL COURT'S DISCRETION AS WELL AS THE LEGISLATIVE INTENT, AS OPPOSED TO TRYING TO FIGURE OUT IN THIS CASE -- WELL, IF -- I GUESS I'M THINKING, IF THE JUDGE HAD GIVEN HIM A 40-YEARS SENTENCE, I DON'T KNOW IF YOU COULD BE HERE.
HE SERVED THE 25 YEARS OR HE SERVED 85% OF 40 YEARS, HE SERVED A VERY LONG SENTENCE.
HE'S BETTER OFF -- IS THE DEFENDANT BETTER OFF GETTING A LONGER SENTENCE WITH THE POSSIBILITY OF PAROLE OR A LONG SENTENCE BUT NOT LIFE WITHOUT THE POSSIBILITY OF

PAROLE?

WE DON'T KNOW.

>> I HAVE NOT THOUGHT THROUGH THAT, YOUR HONOR.

>> NEITHER WAY FOR A 14-YEAR-OLD, YOU THINK FOR A 14-YEAR-OLD A SUMMER VACATION IS FOREVER.

>> RIGHT.

>> TO TELL A 14-YEAR-OLD YOU HAVE A 50-YEAR SENTENCE OR 70-YEAR SENTENCE, FOR THEM THAT IS LIFE.

>> YES, YES.

I DID WANT TO MENTION BECAUSE OF SOMETHING ONE OF THE JUSTICES BROUGHT UP IN ADAMS WHERE THE -- AND IT IS A TAG CASE TO THESE CASES, WHERE THE FIRST DCA HELD THAT A 60-YEAR SENTENCE WITH A 50-YEAR MINIMUM MANDATORY, THAT IS TWO CONSECUTIVE 25 YEARS, VIOLATED GRAHAM.

I DON'T KNOW OF ANY OTHERS LOWER THAN THAT.

>> I THOUGHT THEY, IN THIS CASE, THEY DIDN'T -- THE TRIAL COURT -- I MEAN, THE FIRST DCA DIDN'T FIND IT VIOLATED GRAHAM?

>> IN THIS CASE IT DID NOT. IN THE SUBSEQUENT CASE, ADAMS, THEY DID.

>> SO THEY -- OKAY, WE'LL TAKE A LOOK AT THAT CASE.

>> IT'S CITED IN THE BRIEFS, YOUR HONOR.

I JUST WANTED TO EMPHASIZE THAT WHAT GRAHAM DOES IS TURN THE SENTENCING EQUATION TO THE CHARACTERISTICS OF THE CHILD.

>> IN THIS CASE THE FIRST DCA DIDN'T FIND IT VIOLATED GRAHAM.

>> IN THIS CASE THEY DID NOT, BUT IN A SUBSEQUENT CASE, ADAMS, THEY DID.

>> OKAY.

WE'LL TAKE A LOOK AT THAT CASE.

>> IT'S CITED IN THE BRIEFS,

YOUR HONOR.

I JUST WANTED TO EMPHASIZE THAT WHAT GRAHAM DOES IS TURN THE SENTENCING EQUATION TO THE CHARACTERISTICS OF THE CHILD. NORMALLY, ADULT SENTENCING -- WHICH IS WHAT IS APPLIED TO JUVENILES IN FLORIDA NOW -- TAKES THE SEVERITY OF THE OFFENSE AND APPLIES AN APPROPRIATE SENTENCE.

GRAHAM SAYS YOU HAVE TO LOOK AT THIS DIFFERENTLY BECAUSE THE DEFENDANT IS A CHILD WITH ALL THE DISABILITIES, IF YOU WILL, OF A CHILD.

IF THE COURT HAS NO OTHER QUESTIONS, I'LL RESERVE THE REMAINDER OF MY TIME.

>> THANK YOU.

>> THANK YOU.

>> MAY IT PLEASE THE COURT, I JUST WANT TO CLARIFY THAT EVEN IF THE COURT APPLIES GRAHAM TO WHAT'S BEING CALLED THE FUNCTIONAL EQUIVALENT OF A LIFE SENTENCE OR A DE FACTO LIFE SENTENCE, THERE IS NO REQUIREMENT THAT ALL JUVENILES ARE ENTITLED TO REVIEW OF THEIR SENTENCE FROM THE OUTSET. AND THE ONLY JUVENILES WHO ARE ENTITLED TO THIS WOULD BE THE ONES WHO GET THE LIFE SENTENCE OR THE FUNCTIONAL EQUIVALENT OF A LIFE SENTENCE.

>> I THINK THEY'RE CONCEDING THAT THIS JUVENILE WOULD ACTUALLY NOT EVEN BE CONSIDERED FOR ANYTHING BEFORE 25 YEARS --

>> CORRECT.

>> -- BEFORE HE IS ALMOST 40 YEARS OLD.

>> CORRECT.

AND THAT'S JUST THE POINT THAT I WANTED TO CLARIFY, THAT YOU DON'T HAVE TO GUARANTEE THEM REVIEW AFTER TWO YEARS OR FIVE YEARS.

I MEAN, THEY CAN SERVE 40 YEARS,

50 YEARS BEFORE THEY'RE ENTITLED TO REVIEW, IT'S JUST WITHIN THEIR PERIOD OF A FUNCTIONAL PERIOD OF A LIFE SENTENCE IF THIS COURT DECIDES TO EXTEND GRAHAM --

>> THAT GETS INTO WHAT'S MEANINGFUL, RIGHT?

>> I'M SORRY?

>> HOW OFTEN AND WHAT FORM THAT TAKES UNDER THE PAROLE COMMISSION IS THE DETERMINATION OF HOW MEANINGFUL OF A REVIEW THAT IS.

>> WELL, WHERE IT'S MEANINGFUL. BUT LIKE I SAID, THE COURT DOESN'T DICTATE THE TIME. I MEAN, IF A JUVENILE GETS A 20-YEAR SENTENCE OR A 30-YEAR SENTENCE, THAT'S NOT THE FUNCTIONAL EQUIVALENT OF A LIFE SENTENCE.

THEY'RE NOT ENTITLED TO ANY REVIEW FOR 30 YEARS.

THEY'RE NOT ENTITLED TO RELEASE AFTER 30 YEARS, SO I THINK WE NEED TO KEEP THAT STRAIGHT IN DOING THIS ANALYSIS.

>> WELL, HOW DOES THAT RELATE TO JUVENILES ARE DIFFERENT?

I MEAN, WHERE ARE WE DIFFERENTIATING BETWEEN THE JUVENILE AND ADULT IN TERMS OF REHABILITATION IF THAT'S WHAT, IN FACT, GRAHAM IS SAYING?

>> GRAHAM HAS SAID THAT SOMEONE NEEDS REVIEW SOMETIME WITHIN THEIR LIFE.

THEY NEED AN OPPORTUNITY FOR RELEASE WITHIN THEIR LIFE.

IT DOESN'T SAY WHEN --

>> IT DOESN'T SAY, WELL, BY 25, 30 YEARS WE'LL LOOK AT IT AND GIVE YOU --

[INAUDIBLE]

NOW, AREN'T WE CONDEMNING HIM FROM THE OUTSET?

I THOUGHT THAT HE HAD TO HAVE A MEANINGFUL REVIEW AT THE OUTSET.

>> NO.

>> NOT THAT HE HAS TO BE
RELEASED, BUT THAT IT HAS TO BE
LOOKED AT TO SEE WHETHER OR NOT
HE'S BEEN REHABILITATED.

>> NO, NO.

GRAHAM DOES NOT REQUIRE THAT,
AND GRAHAM ONLY APPLIES TO THE
LIFE SENTENCES OR IF YOU WANT TO
EXTEND IT TO DE FACTO LIFE
SENTENCES WHICH ARE GOING TO BE
SENTENCES OF AT LEAST 50 YEARS.
SO A JUVENILE WHO IS SENTENCED
TO 40 YEARS IS NOT ENTITLED TO
ANY REVIEW.

SO THAT'S --

>> WELL, BUT THAT'S ALL
HYPOTHETICAL.

THAT'S SOME OTHER CASE, RIGHT?

>> RIGHT.

>> I MEAN, I UNDERSTAND YOUR
VIEWS ABOUT THAT, BUT WE'VE GOT
CASES HERE WHERE IT SEEMS LIKE
BY JUST ABOUT ANY REASONABLE
UNDERSTANDING OF WHAT A LIFE
SENTENCE IS THAT THIS CASE FALLS
INTO THE EQUIVALENT OF A LIFE
SENTENCE.

>> I UNDERSTAND THAT, YOUR
HONOR, AND I'M JUST --

>> THESE OTHER CASES, WHERE YOU
GO, HOW FAR YOU BACK UP YEAR BY
YEAR AND WHERE YOU GET OUT OF
THAT TERRITORY IS A QUESTION FOR
ANOTHER DAY, ISN'T IT REALLY?

>> IT IS.

AND I'M JUST SAYING IN TERMS OF
THE ANALYSIS OF WHAT KIND OF
REVIEW THEY WANT, NOT IMMEDIATE
REVIEW UNDER GRAHAM, DOES NOT
REQUIRE THAT.

IF THERE ARE TO FURTHER
QUESTIONS, THEN I'LL RELY ON MY
BRIEF FOR THE REMAINING ISSUE.

>> THANK YOU FOR YOUR ARGUMENTS.

>> THANK YOU.

>> I JUST WANT TO EMPHASIZE THAT
WHAT I'M TALKING ABOUT IN
MR. GRIDINE'S CASE IS THAT HE
SERVED 25 YEARS, AND SHORTLY
BEFORE THE END OF THAT TIME

PERIOD HE RECEIVED A REVIEW TO DETERMINE WHETHER HE HAS DEMONSTRATED THE MATURITY AND REHABILITATION NECESSARY FOR HIS RELEASE.

>> THAT'S HOW UNDER THE PAROLE SYSTEM AS IT EXISTED HE WOULD GET A REVIEW BEFORE THE 25-YEAR PERIOD.

>> CORRECT.

>> EXPIRES, RIGHT?

>> CORRECT.

>> WE DON'T HAVE TO REALLY -- THAT'S JUST SOMETHING THAT IF WE PUT HIM IN THE PAROLE SYSTEM, THAT WOULD KIND OF HAPPEN AS A MATTER OF COURSE.

>> I WOULD THINK SO, YOUR HONOR, ALTHOUGH I'M CERTAINLY NOT AN EXPERT ON PAROLE.

THANK YOU VERY MUCH.

>> THANK YOU FOR YOUR ARGUMENTS. THE COURT WILL BE IN RECESS FOR TEN MINUTES.

>> ALL RISE.