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Cruel & Unusual Punishment

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SUPREME COURT

RICHMOND COUNTY

People v. Grasso⁸⁰
(decided June 17, 1994)

The defendant claimed that his right to be free from cruel and unusual punishment under both the State⁸¹ and Federal⁸² Constitutions was violated after being required to serve a twenty year to life prison sentence⁸³ in New York before serving a death sentence for an Oklahoma murder conviction.⁸⁴ The Supreme Court of Richmond County held that the defendant would not be permitted to withdraw his previous guilty plea or have his sentence suspended in order to serve the Oklahoma death sentence.⁸⁵ In denying the defendant's constitutional claim, the court employed an analysis that focused upon preserving the integrity of the court's sentencing process and the importance of upholding the state's distinct policy regarding the death penalty.⁸⁶

80. 162 Misc. 2d 84, 616 N.Y.S.2d 156 (Sup. Ct. Richmond County 1994). Thomas Grasso was deported to Oklahoma on January 11, 1995 and was subsequently executed on March 20, 1995.

81. N.Y. CONST. art. I, § 5. This provision states in pertinent part: "Excessive bail shall not be required nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted" *Id.*

82. U.S. CONST. amend. VIII. This amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." *Id.*

83. *Grasso*, 162 Misc. 2d at 85, 616 N.Y.S.2d at 157. The defendant plead guilty to second degree murder and was sentenced to twenty years to life. *Id.*

84. *Id.*

85. *Id.* at 86, 90, 616 N.Y.S.2d at 158, 160.

86. *Id.* at 87, 89, 616 N.Y.S.2d at 158, 160. The court stated that if it were to proceed with re-sentencing "[o]nly [the] defendant's interests, not the interests of justice, would be served." *Id.* at 89, 616 N.Y.S.2d at 160. The "defendant would have a justice in a state where the death penalty does not exist set aside its sentence in order to facilitate a death sentence in another jurisdiction." *Id.* The court noted, without passing judgment on Oklahoma's

The defendant plead guilty to second degree murder and was sentenced to twenty years to life in prison for the brutal murder of an elderly man during a robbery he orchestrated.⁸⁷ After incarceration in a New York prison, the defendant was transferred to Oklahoma to stand trial for another murder charge.⁸⁸ Following the transfer, the defendant plead guilty to the Oklahoma murder charge and consented to his execution in accordance with Oklahoma law.⁸⁹ In order for Oklahoma to enforce its conviction before defendant began his New York sentence, the State of Oklahoma had to obtain a waiver from New York releasing the defendant to its custody or to seek a commutation of the defendant's sentence from the Governor of New York.⁹⁰ When this request was made to the State of New York, Governor Mario Cuomo denied Oklahoma's request to preempt the defendant's New York conviction and declined to commute the defendant's New York sentence.⁹¹

death penalty, "[t]he dichotomy between New York and Oklahoma's public policy regarding the death penalty is acutely apparent." *Id.*

87. *Id.* at 89, 616 N.Y.S.2d at 159. The victim was found in a kneeling position with severe head and facial injuries sustained when the defendant stomped the victim and choked him with an electrical cord because the victim put his hands together as if he intended to pray. *Id.* at 88-89, 616 N.Y.S.2d at 159.

88. *Id.* at 85, 616 N.Y.S.2d at 157. Defendant was transferred pursuant to § 580.20 of the New York Criminal Procedural Law, which, in article I, provides that an individual may be transferred to "encourage the expeditious and orderly disposition of such [criminal] charges and determination of the proper status of any and all detainees based on untried indictments, informations or complaints." *Id.* at 88, 616 N.Y.S.2d at 159 (citing N.Y. CRIM. PROC. LAW § 580.20 (McKinney 1994)).

89. *Grasso*, 162 Misc. 2d at 85, 616 N.Y.S.2d at 157.

90. *Id.* The *Grasso* court discussed the custodial aspect of article V of § 580.20 of the New York Criminal Procedural Law and stated that the defendant was transferred pursuant to the statute and that Oklahoma only retains "temporary" custody of the defendant and "[a]t the earliest practicable time consonant . . . the prisoner shall be returned to the sending state." *Id.* at 88, 616 N.Y.S.2d at 159 (citing N.Y. CRIM. PROC. LAW § 580.20 (McKinney 1994)).

91. *Id.* at 85, 616 N.Y.S.2d at 157. The action by Governor Cuomo denying the defendant's request was not addressed by the court since the defendant never raised a claim against Governor Cuomo's decision. *Id.*

As a result, the defendant moved to set aside his New York sentence and requested that the sentence either run concurrently with or after the Oklahoma sentence.⁹² The defendant sought support for his motion by contending that by serving the New York sentence prior to the Oklahoma sentence, he would be subjected to “cruel and unusual punishment” and that any rehabilitative efforts would be “de minimus.”⁹³ The defendant contended that he should be permitted to serve Oklahoma’s sentence over New York’s sentence in order to avoid being idle in a New York prison for twenty years only then to be executed upon his return to Oklahoma.⁹⁴

Although the court did not address this claim, the court did state that the power to refuse such a request “is clearly a function within the province of the executive branch.” *Id.* See N.Y. CONST. art IV, § 4 (“The governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offenses . . .”) (emphasis added); see also *People ex rel. Page v. Brophy*, 248 A.D. 309, 310-11, 289 N.Y.S. 362, 364 (4th Dep’t 1936) (stating that the Governor has unlimited power to initiate “reprieves, commutations, and pardons” as he deems proper and that this authority is not limited by decisional law or statute).

92. *Grasso*, 162 Misc. 2d at 85, 616 N.Y.S.2d at 157. This motion by defendant was made pursuant to § 440.20 of the N.Y. Criminal Procedural Law, which provides that a sentence may be set aside if it is “unauthorized, illegally imposed or otherwise invalid as a matter of law.” N.Y. CRIM. PROC. LAW § 440.20 (McKinney 1994).

93. *Grasso*, 162 Misc. 2d at 85, 616 N.Y.S.2d at 157. The *Grasso* court also focused on another argument, not raised by the defendant, pertaining to the tremendous expense that would be realized by New York for confining the defendant to prison for twenty years only to later release him to Oklahoma to be sentenced to death, a topic hotly debated within the public when the case first emerged. *Id.* at 86, 616 N.Y.S.2d at 158.

94. *Id.* at 85, 616 N.Y.S.2d at 157. The *Grasso* court addressed this contention by the defendant with little sympathy and looked upon this contention as “[a] curious anomaly.” *Id.* at 88, 616 N.Y.S.2d at 159. The court cited the defendant’s pleading in which he stated that he would have to ‘endure’ New York’s twenty year minimum sentence and that his reference to “‘harshness,’ ‘severe punishment,’ and ‘cruel and unusual punishment’ ring hollow in light of the harsh, cruel and severe crime [the defendant] inflicted on [the victim].” *Id.* at 89, 616 N.Y.S.2d at 159. The court continued on to state that “[n]o mercy was shown the victim, no mercy will be shown the killer.” *Id.*

The *Grasso* court concluded that the defendant's consecutive sentences could not be considered cruel and unusual.⁹⁵ In its conclusion, the *Grasso* court noted *People ex rel. Emanuel v. Quinn*,⁹⁶ in which a New York court held that once a conviction has been handed down, any "change in the law does not interfere with the execution of the sentence."⁹⁷ Thus, according to *Quinn*, once an individual has been tried and incarcerated, a statutory amendment will not be applied in favor of the convicted offender.⁹⁸ Also, the *Grasso* court sought support from *People v. Boatwright*,⁹⁹ which held that the defendant had "no cause to complain that [his sentence] was unduly harsh or excessive" since it was within legal sentencing guidelines and because the sentence was negotiated by the defendant.¹⁰⁰ In *Grasso*, the defendant was similarly situated as the defendant in *Boatwright* because he also plead guilty to his murder charges and was well aware of the result of such actions.

The *Grasso* court then addressed a matter of considerable importance; the affect that a decision in favor of the defendant would have on sentencing procedures within New York¹⁰¹ and the affect that such a decision would have on the sanctity of New York law.¹⁰² The court stated that "[a] sentencing proceeding inherently proper and legal when imposed cannot be rendered

95. *Id.* at 86-87, 616 N.Y.S.2d at 159.

96. 66 A.D.2d 905, 411 N.Y.S.2d 696 (2d Dep't 1978). The petitioner was convicted on various charges and sentenced to fifteen years in prison. *Id.* at 905, 411 N.Y.S.2d at 697. The petitioner's prison sentence did not specify a minimum sentence so the parole board instituted a minimum sentence of five years. *Id.* Following his conviction, New York State passed a statute allowing an individual who served jail time prior to the commencement of a conviction to credit the post-conviction prison sentence with the prior time served. *Id.* The petitioner claimed that his pre-conviction jail time should be credited to his post-conviction prison term. *Id.* at 906, 411 N.Y.S.2d at 697.

97. *Id.*

98. *Id.*

99. 159 A.D.2d 510, 552 N.Y.S.2d 379 (2d Dep't 1990). In *Boatwright*, the defendant was convicted of the sale of a controlled substance and sentenced to five to fifteen years in prison. *Id.*

100. *Id.* at 511, 552 N.Y.S.2d at 380.

101. *Grasso*, 162 Misc. 2d at 87, 616 N.Y.S.2d at 158.

102. *Id.*

legally insufficient because of the imposition of another state's sentence."¹⁰³ The court continued to uphold its sentence by indicating that state sovereignty and public policy must be absolute and not be affected by any laws of another state.¹⁰⁴ The court emphasized that the strength in our sentencing guidelines is not rooted by the influence of "public opinion or political preferences" but rather in the "wise and considered decisions of the legislature" mandated by the New York State Constitution.¹⁰⁵

In *State of New York by Coughlin v. Poe*,¹⁰⁶ the Eastern District of Oklahoma responded to a declaratory judgment action by the State of New York seeking a determination of its rights and responsibilities under the Interstate Agreement on Detainers following the request of the defendant Grasso to remain in Oklahoma to serve his death sentence.¹⁰⁷ The *Coughlin* court concluded that the Interstate Agreement on Detainers Act did not prevent states that have adopted similar statutes from waiving their rights under the Act and entering into an agreement with another state regarding the status of a defendant.¹⁰⁸ The court in *Coughlin* refused to override the legislative purpose of the statute.¹⁰⁹ Accordingly, although Oklahoma and New York could have made an agreement to waive New York's right to the mandatory return of the defendant, the *Grasso* court considered this issue "moot" since Governor Cuomo exercised his right to refuse commutation of the defendant's sentence.¹¹⁰

103. *Id.*

104. *Id.*

105. *Id.*

106. 835 F. Supp 585 (E.D. Okla. 1993).

107. *Id.* at 592.

108. *Id.* at 592-93.

109. *Id.* at 593.

Although there may be a plethora of persuasive and redeeming arguments for a mechanism whereby a prisoner receiving the death penalty need not serve out an existing term sentence prior to the execution of his death sentence, this court is not at liberty to substitute its judgment for the collective wisdom of the legislature.

Id.

110. *Grasso*, 162 Misc. 2d at 88, 616 N.Y.S.2d at 159.

Perhaps the most significant reasoning expounded by the court relates in part to the underlying outcome that a decision in favor of the defendant would present. The court explicitly concluded that by allowing the defendant's constitutional claim to prevail, the court would violate the state's distinct policy against state facilitated suicide and the state's plain policy relating to the death penalty.¹¹¹ By advocating such a practice New York would in essence be adopting a contrary policy favoring the death penalty.

In determining whether the sentence imposed on the defendant by New York was in violation of the defendant's state and federal constitutional rights, the court addressed the issue of whether the twenty year to life sentence constituted cruel and unusual punishment. In adopting the reasoning set forth by the United States Supreme Court in *Harmelin v. Michigan*,¹¹² the court held that although the defendant was required to serve both sentences, serving the New York and Oklahoma sentences consecutively did not constitute cruel and unusual punishment.¹¹³ In *Harmelin*, the Court rejected the petitioner's claims that the sentence imposed was "disproportionate" to the crime for which he was convicted, holding that the mandatory sentence left no judicial discretion that could have influenced the length of the sentence.¹¹⁴ The *Harmelin* Court reasoned that "[s]evere, mandatory penalties may be cruel, but they are not unusual in the constitutional sense, having been employed in various forms

111. *Id.* at 89, 616 N.Y.S.2d at 160. The court stated that if "re-sentencing [were] permitted the court would be justifying a violation of this state's public policy on facilitating suicide and the imposition of the death penalty by relying upon the accepted policy in Oklahoma." *Id.*

112. 501 U.S. 957 (1991). The "[p]etitioner was convicted of possessing 672 grams of cocaine and sentenced to a mandatory term of life in prison without possibility of parole." *Id.* at 961. The petitioner claimed that the mandatory life sentence violated the Eighth Amendment of the United States Constitution prohibiting cruel and unusual punishment. *Id.* The Court rejected the petitioners claim. *Id.* at 996.

113. *Harmelin*, 501 U.S. at 994-95.

114. *Id.* at 961-62, 996.

throughout our Nation's history."¹¹⁵ In addition, the Court also stated that the purpose of the Cruel and Unusual Punishment Clause of the Eighth Amendment was not to prevent legislatures from implementing disproportionate sentences, but rather to prevent the legislature from authorizing methods of punishment contrary to customary methods.¹¹⁶ Moreover, the Court rejected the petitioner's claim that his sentence was disproportionate to his crime because every state is entitled to treat certain acts in the manner they deem most appropriate.¹¹⁷ Although the Court upheld the petitioner's conviction, the Court did not render all penalties under our current criminal procedure system as coherent with the Eighth Amendment.¹¹⁸ The Court separated a death sentence from all other penalties due to its extreme nature. The Court reasoned that a death sentence is different from other penalties because of its irrevocable nature and when such a sentence is imposed, review is necessary.¹¹⁹

Both the New York State and federal courts have adhered to strict compliance of the right to be free from cruel and unusual punishment. Nevertheless, the federal courts have decided to leave state sentencing procedures to the sole discretion of the state legislatures and impart to them the power to develop their own sentencing guidelines. In summary, both jurisdictions have rendered twenty year to life sentences and death sentences consonant with the right to be free from cruel and unusual

115. *Id.* at 994-95. The court characterized "unusual" punishment as "cruel methods of punishment that are not regularly or customarily employed." *Id.* at 976.

116. *Id.* at 975-85.

117. *Id.* at 989. The Court stated that "[t]he Eighth Amendment is not a ratchet, whereby a temporary consensus on leniency for a particular crime fixes a permanent constitutional maximum, disabling the States from giving effect to altered beliefs and responding to changed social conditions." *Id.* at 990.

118. *Id.* at 995.

119. *Id.* at 995 (citing *Furman v. Georgia*, 408 U.S. 238, 306 (1972) (Stewart, J., concurring)).

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punishment, although the Supreme Court dictates that a death sentence does mandate certain constitutional protections.¹²⁰

120. *See, e.g.*, *Turner v. Murray*, 476 U.S. 28, 36-37 (1986); *Eddings v. Oklahoma*, 455 U.S. 104, 117 (1982).

