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High Court Considers System for Sentencing

How the Supreme Court rules may give inmates in California a chance for shorter prison terms.

By David G. Savage
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WASHINGTON — The U.S. Supreme Court wrestled Wednesday with its conflicting rulings on whether judges or juries should decide criminal punishments, with the fate of California's nearly 30-year-old sentencing law hanging on the outcome.

After the hourlong argument, it was unclear whether the justices would uphold the state's system or give thousands of inmates a chance for a shorter prison term.

The answer will depend on how the justices resolve a conflict that the high court created.

Until the mid-1970s, judges decided on the punishment for a convicted criminal.

But California, like most other states, adopted new laws that set guidelines for judges.

In 1977, the California law set a prison term for felonies that would be the norm in most cases.

But judges were permitted to impose a longer or shorter sentence than this so-called middle term if they decided that certain factors warranted doing so.

Now, that sentencing system has come under challenge based on recent Supreme Court rulings that say juries, not judges, should decide whether those factors should lead to potentially longer prison terms.

Two years ago, an unusual coalition of the court's liberal and conservative justices struck down the sentencing system in Washington state.

That system, like California's and the federal sentencing rules, said judges could impose longer prison terms if they found that certain "aggravating factors" called for extra punishment.

Led by Justices John Paul Stevens and Antonin Scalia, a 5-4 majority said defendants had a constitutional right to have a jury decide whether aggravating factors, such as a defendant's failure to show remorse, should lead to longer sentences.

But a year later, when faced with a direct challenge to the federal sentencing system, a different 5-4 majority upheld it.

In that case, the court concluded that the rules for federal judges were merely guidelines, not legal mandates.

On Wednesday, the high court debated whether California's system set guidelines for its judges, or legal mandates.

Peter Gold, a San Francisco lawyer for a convicted child molester, said the California law "mandates that judges shall impose the middle term unless there are factors

in aggravation or mitigation."

His client, John Cunningham, was a police officer who was convicted of sexually abusing his son.

State law set a middle prison term of 12 years for this crime, with a low sentence of six years and an upper one of 16 years.

Because the judge found a series of aggravating factors, he sentenced Cunningham to 16 years.

Last year, the state Supreme Court upheld this sentence and said California's system set guidelines for judges, similar to the federal system.

The outcome of the U.S. Supreme Court case may turn on Justice Ruth Bader Ginsburg, who switched sides to create the conflicting rulings in the recent pair of cases.

She was unusually quiet during Wednesday's argument.

The court will vote behind closed doors this week in the case of Cunningham vs. California, and it will probably hand down its ruling in several months.

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