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Judicial discretion at stake in high court

RICHMOND :U.S. Supreme Court to hear case stemming from sentencing of former police officer

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The U.S. Supreme Court is set to hear arguments Wednesday about a Contra Costa County case that could decide how much discretion California judges have when sentencing convicted criminals.

The ruling could change the fundamental laws of sentencing that have guided trial judges for the past three decades.

"In terms of impact on the judicial process, this is huge," said Laurie Levinson, Loyola University School of Law professor. "It could blow apart the California sentencing scheme."

A jury convicted former Richmond police officer John Cunningham in 2003 of one count of continuous sexual abuse. He had molested a 10-year-old boy for a year, court documents say.

Superior Court Judge Theresa Canepa sentenced him to the maximum of 16 years in state prison.

In California, judges have discretion to sentence a defendant to one of three levels of punishment -- lower, middle or upper.

Cunningham faced six, 12 or 16 years in state prison.

Judges consider mitigating factors, which favor the defendant, and aggravating factors, which favor a longer sentence.

In Cunningham's case, Canepa considered Cunningham's clean criminal history as a mitigating factor. Six aggravating factors included great bodily harm, threatening great bodily harm unless the boy recanted his story and taking advantage of a position of trust.

Canepa determined that the aggravating factors were true, that they outweighed the mitigating factor and that Cunningham should get the toughest penalty.

The justices are being asked to determine whether California judges have the authority to decide the truth of aggravating factors, or whether a jury should decide that.

The decision could impact convicted criminals awaiting sentence, those currently appealing their cases and possibly even those who have exhausted their appeals, Levinson said.

Cunningham's appellate attorney, Peter Gold, argues in court documents that the middle level of punishment is actually the maximum term that a judge can hand down unless a jury finds the aggravating factors true beyond a reasonable doubt.

The California Attorney General's Office argues in court documents that California judges can do exactly what Canepa did.

California already has a way to increase a sentence beyond its maximum level, attorneys representing the state say. Juries must find true additional facts in the case called enhancements, such as whether a weapon was used, which tack on additional prison time.

The high level is the maximum sentence without enhancements, the Attorney General's Office says, not the middle level as Gold argues.

Ultimately, the justices need to decide between two extremes, said Robert Weisberg, Stanford School of Law professor. In one scenario, judges would sentence a defendant to the middle term unless a jury finds the aggravating factors as true. The other option is giving the judge complete discretion.

"Right now, it's hard to tell how the law is supposed to operate," Weisberg said.

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