January 22, 2007

Court Rules Against Sentencing Rules in Calif.

By **DAVID STOUT**

WASHINGTON, Jan. 22 -- The Supreme Court ruled 6 to 3 today that California's system of sentencing criminals is unconstitutional because it gives judges some authority that really belongs to jurors and thus deprives a defendant of a fair trial.

In a decision that could affect thousands of California prisoners, the justices said the 16-year sentence imposed on John Cunningham, who was convicted in Contra Costa County of sexually abusing his young son, was improper. The decision effectively cuts four years off Mr. Cunningham's sentence.

The problem, according to the justices in the majority, was that the trial judge, acting under California's determinate-sentencing law, had increased Mr. Cunningham's sentence from the 12-year "middle" range specified in the law to the 16-year "upper" range. The judge did so after finding several aggravating or unfavorable facts about the case, including the age and vulnerability of the victim, and a single mitigating factor, that the defendant had no prior record.

The system under which the trial judge acted was also flawed, Justice **Ruth Bader Ginsburg** wrote for the majority. "Fact-finding to elevate a sentence from 12 to 16 years," she wrote, "falls within the province of the jury employing a beyond-a-reasonable doubt standard, not the bailiwick of a judge determining where the preponderance of the evidence lies."

Today's ruling, which had been eagerly anticipated by defense lawyers and by corrections officials in several other states, was the latest in a series of decisions in recent years in which the high court has held that juries, not judges, must find additional facts that justify higher sentences.

The difference between the "beyond-a-reasonable doubt" standard, which a jury is supposed to follow in finding that a defendant is, in fact, guilty and the "preponderance of evidence" standard is crucial.

The first means "fully satisfied, entirely convinced, satisfied to a moral certainty," while the second and lesser standard means "evidence which is of greater weight or more convincing" than evidence offered against it, according to Black's Law Dictionary.

When the case was argued before the justices on Oct. 11, Mr. Cunningham's lawyer, Peter Gold of San Francisco, argued that the four years tacked on to his client's sentence violated his Sixth Amendment right to trial and his Fourteenth Amendment right to due process.

Lawyers for the state argued, unsuccessfully, that the judge was authorized to choose from a lower, middle or higher range of sentence — six, 12 or 16 years — based on the jury verdict.

Joining Justice Ginsburg's majority decision today were Chief Justice **John G. Roberts** Jr. and Justices **John Paul Stevens**, **Antonin Scalia**, **David H. Souter** and **Clarence Thomas** Dissenting were Justices **Anthony M. Kennedy**, **Stephen G. Breyer** and **Samuel A. Alito Jr.**

"Judges and legislators must have the capacity to develop consistent standards, standards that individual juries empaneled for only a short time cannot elaborate in any permanent way," Justice Kennedy wrote.

Justice Kennedy, who was joined by Justice Alito, said today's majority ruling continued the unfortunate trend outlined by the earlier opinions restricting judges' discretion. "Judges and sentencing officials have a broad view and long-term commitment to correctional systems," he wrote. "Juries do not."

Justice Alito, in a separate dissent joined by Justices Kennedy and Breyer, wrote that, contrary to the majority's findings, the California system "is not meaningfully different" from a federal sentencing procedure upheld by the high court in an earlier case.

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- [U.S.](#)
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  - [Business](#)
- [Technology](#)
  - [Science](#)
  - [Health](#)
  - [Sports](#)
  - [Opinion](#)
    - [Arts](#)
    - [Style](#)
    - [Travel](#)
    - [Jobs](#)
  - [Real Estate](#)
- [Automobiles](#)
- [Back to Top](#)

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