

Imprison kids for life? Sickening as that sounds, in America, yes, you can



US SUPREME COURT JUSTICE BRETT KAVANAUGH (IMAGE: AP/SUSAN WALSH, FILE)

Only in America can a child get life without parole. And the conservative Supreme Court has no interest in changing that.

Donald Trump made no secret of his delight at being gifted by fate the opportunity to stack the US Supreme Court with conservative judges, nor his expectation that they'd return the favour when he needed them.

The judges comprehensively disappointed Trump, refusing to even hear any of his baseless legal challenges to his 2020 election loss. The Republican Party, for which domination of the court has become almost its sole *raison d'être*, was probably less concerned, expecting a different pay-off.

The court, meanwhile, is getting on with delivering the goods. It is now stacked 6-3 with judges ranging from very conservative to purely ideological; the liberal minority has been reduced to snarky dissents. With lifetime appointments, the new status quo will continue for a very long time.

As good an example as any is the decision of the court in *Jones v Mississippi*, concerned with the question of whether it is okay to imprison a child for life. The short answer, in America, is yes.

Brett Jones was 15 when he stabbed his grandfather to death. He was living with his grandparents in rural Mississippi. One day in 2004, Jones was surprised by his grandfather while the teenager and his girlfriend were in bed together. That led to an argument, and later the same day a fight which ended with Jones stabbing his grandfather eight times.

Jones was convicted of murder and sentenced to life imprisonment without parole, under Mississippi's mandatory sentencing law which applied regardless of age.

A bit later, the Supreme Court in two other cases ruled that such laws, when applied to juveniles, offended the Eighth Amendment's prohibition on "cruel and unusual punishments". That effectively invalidated Mississippi's law, so Jones had to be re-sentenced. He got life without parole again.

Jones' appeal eventually made it to the Supreme Court. His argument was that his sentence was unconstitutional, because the court had interpreted the Eighth Amendment as requiring two things before a convicted murderer under 18 years can be sentenced to life: the law must allow the sentencing judge or jury a discretion (i.e. it can't be mandatory); and life sentences should be imposed only "on those rare children whose crimes reflect irreparable corruption".

I know, you're thinking what the hell, who on earth would think that it could ever be appropriate to put a child in prison and throw away the key? Well, you're not in Kansas anymore, you're in Mississippi, or any of the 24 other US states who do exactly that. America is the only country that sentences children to life without parole.

And they're fine with it. The decisions in 2012 and 2016 which overturned mandatory sentencing were hotly contested, the conservative minorities arguing stridently that they were wrong. Justice Scalia expressed his deep concern that the rulings may eventually "eliminate life without parole for juvenile offenders", like that was a self-evidently bad thing. Ever since, the conservatives have been itching for a chance to reverse the course, which they have now done in the Jones case.

The majority judgment in Jones was written by Trump's appointee, Brett Kavanaugh. He declared that the Supreme Court never said that there was a subjective restriction on the life-sentencing of children; rather, the only thing that's out is mandatory sentencing. As long as the court has a discretion, it can sentence as many kids to life as it likes, and isn't answerable for why. Given the facts of Jones' case, it's readily obvious that his crime wasn't suggestive of a person with no prospects of ever being rehabilitated. But the majority was okay with him going away forever.

As a gauge on how hot this issue is, here's the opening line of Justice Sotomayor's dissenting opinion:

"Today, the Court guts *Miller v Alabama* and *Montgomery v Louisiana* [the earlier cases]." She went on: "The Court is fooling no one."

The arcane legal arguments about whether a court is following its own earlier authority or inverting it while pretending not to are of interest to lawyers, but not to Brett Jones or the 1464 other prisoners serving life sentences without parole for crimes committed as juveniles (as at the start of 2020).

It is, to the minds of places that aren't America, bizarre that this is even a conversation. The idea that a child should lose their prospects of life on a permanent basis, no matter how heinous their crime, offends every precept of humanism and the rule of law.

Mind you, it was only in 2005 that the Supreme Court ruled capital punishment out of bounds for juveniles. So, you know, small steps.

Of more significance is the role of *Jones v Mississippi* as a bellwether. The 6-3 super-majority, fully Republican-stacked and proof from overturning for decades to come, is flexing its ideological muscles and happy to discard precedent along with humanity as it prods the US back towards biblical justice. Look out, *Roe v Wade*.

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