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Casenote: The Death Penalty Cases: A Summary

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The Death Penalty Cases: A Summary

by Charles Jay Iseman

The Supreme Court of the United States, in five decisions announced on July 2, 1976, reported at 44 U.S.L.W. 5229-92, established the requirements for constitutionally valid capital punishment laws. These requirements include: (1) the sentencing authority must be required to focus in on the individual circumstances surrounding the defendant and the crime in order to weigh any aggravating circumstances against any mitigating circumstances; (2) the sentence of death in any particular case must not be excessive or grossly disproportionate with respect to the penalty imposed in similar cases. The Supreme Court held that the death penalty is not unconstitutional per se under the "Cruel and Unusual Punishment" Clause of the Eighth Amendment (as applied to the states through the Fourteenth Amendment). Specifically, the court found the death penalty statutes of Georgia, Florida, and Texas each to be constitutional on its face and in its application under the facts before the court. At the same time, the court found the mandatory death sentence laws of North Carolina and Louisiana each unconstitutional on its face. Thus, the Court has provided a clear legislative path for the states to follow to escape the great legal confusion resulting from the high court's decision in *Furman v. Georgia*, 408 U.S. 238 (1972).

The *Furman* Court determined, in essence, that all capital punishment laws then existing were unconstitutionally "cruel and unusual" because of the haphazard and arbitrary manner in which they had been applied. At that time, the Court reserved the question as to whether the death penalty was "cruel and unusual" per se and hence unconstitutional.

In *Gregg v. Georgia*, 44 U.S.L.W. 5230, the Court upheld the statute that the Georgia Legislature enacted to replace the one specifically declared unconstitutional in *Furman*. The *Furman*-era statute gave the jury unfettered discretion to sentence to death. The post-*Furman* statute established particular procedures to insure that (1) the jury would have to consider the particular circumstances surrounding the defendant and the crime, (2) the jury would have to state in writing those statutory aggravating circumstances it found to exist which permit the imposition of the death sentence, and (3) the Georgia Supreme Court would, on expedited review, determine whether the death penalty as imposed was not grossly disproportionate to penalties imposed in simi-

lar cases. In particular, the Georgia statute requires (1) that there be a bifurcated (two-stage) trial with one stage for the question of guilt or innocence and the other stage for determination of the appropriate sentence; (2) that the death penalty be imposed only for six categories of crime (murder, certain kidnapings, armed robbery, rape, treason, and aircraft hijacking); (3) that in order to impose the death sentence for any of the above crimes, except treason and aircraft hijacking, the jury must find, in writing, that the crime occurred in the process of the commission of another felony, that the purpose of the crime was to receive money or items of monetary value, or that the offense was outrageously or wantonly vile; (4) that if the jury finds any of the circumstances above, then it may optionally impose the death sentence; and (5) that there be expedited direct review by the Georgia Supreme Court.

The defendant Gregg, a hitch-hiker, shot and killed the operator of the car, as well as another passenger, before stealing the automobile. The jury found Gregg guilty of murder and armed robbery and then, in the sentencing stage, found that the murder constituted felony-murder and was committed for the purpose of taking the car. No evidence in mitigation was introduced by the defense. Thereupon the jury sentenced Gregg to death on both counts. The Georgia Supreme Court, in expedited review, vacated the death sentence for armed robbery on two grounds: (1) the death penalty was excessive because it was seldom imposed for armed robbery, and (2) it is a denial of due process to consider murder as an aggravating circumstance to armed robbery, once the armed robbery has already been considered as aggravating the murder. However, the Georgia Supreme Court upheld the death sentence for murder.

In affirming the Georgia decision, the United States Supreme Court held that the death penalty is not unconstitutionally "cruel and unusual" because: (1) the death penalty is consistent with the wording of the Constitution, since reference to it appears in the Fifth Amendment ("capital . . . crime", "jeopardy of life or limb") and the Fourteenth Amendment (due process clause—deprivation of life), (2) the death penalty is consistent with contemporary standards of decency because the Legislatures of thirty-five states enacted death penalty laws subsequent to the *Furman* decision in 1972, (3) retribution and deterrence are both permissible considerations for legislative bodies debating the enactment of capital punishment laws, and (4) the "Cruel and Unusual Punishment" Clause of the Eighth Amendment prohibits torture and prohibits punishment grossly disproportionate to the severity of the crime. The Court found that the death sentence was constitutionally imposed on Gregg because: (1) the jury was given adequate guidance and standards with which to impose the penalty, and the defendant was given ample opportunity to present any mitigating circumstances, (2) the Georgia Supreme Court ensured that the imposition of the death sentence was not being administered here in an arbitrary fashion and was not grossly disproportionate to the severity of punishment in similar cases, (3) there existed extrajudicial means of mercy, such as the prosecutor's plea bargaining discretion and executive clemency, which did not render the means of imposing death sentences arbitrary and constitutionally invalid.

In *Proffitt v. Florida*, 44 U.S.L.W. 5256, the United States Supreme Court upheld the Florida capital punishment law. The Court found that the state statute requires the trial judge (the sentencing authority) to weigh eight statutory mitigating factors, requiring the judge to consider the individual circumstances of the defendant and the crime in the light of legislatively enacted standards. The Court further found that the Florida Supreme Court has been carefully reviewing each death penalty case to preclude the possibility of arbitrary application and to insure uniformity. Both the Georgia and Florida statutes are similar to the capital punishment law of the Model Penal Code.

The Supreme Court also upheld the Texas capital punishment law in *Jurek v. Texas*, 44 U.S.L.W. 5262. This statute limits the application of the death sentence to five distinct categories of intentional and knowing murders. If the jury finds the defendant guilty of a crime in one of these five categories of murder, it must then determine (1) whether the defendant's conduct causing the death was deliberate and done with the reasonable expectation that death would result, (2) whether the defendant would commit criminal acts of violence, in the future, thereby constituting a threat to society, and (3) if raised by the evidence, whether the defendant's conduct was an unreasonable response to any provocation by the victim. If the jury finds, beyond a reasonable doubt, that each question above must be answered affirmatively, then the death sentence is mandatorily imposed; otherwise, the sentence is life imprisonment. Although this statute is ostensibly a mandatory death sentence law, the Court found that, in practice, the jury has to consider any mitigating factors surrounding the defendant and the crime. This finding of constitutionality follows from the Texas Court of Criminal Appeals' interpretation of the "continuing threat to society" question as requiring the jury to consider any mitigating factors.

In contrast with the *Gregg*, *Proffitt*, and *Jurek* cases, the Supreme Court found, in *Woodson v. North Carolina*, 44 U.S.L.W. 5267, and *Roberts v. Louisiana*, 44 U.S.L.W. 5281, that the mandatory death sentence laws of North Carolina and Louisiana are unconstitutional. The statutes in question require that if a defendant is found guilty of a crime in a particular category, then he automatically is sentenced to death. For example, in the North Carolina case, defendant Woodson, who served as a look-out for co-defendant Waxton, who committed a murder and armed robbery, was found guilty of first-degree murder and automatically sentenced to death. Since according to the statute, no consideration of the individual circumstances surrounding the crime could enter into the sentencing procedure, the Court held these statutes to be unconstitutionally "cruel and unusual". The Court interpreted the Eighth Amendment as requiring the sentencing author-

ity to consider the character of the defendant and the circumstances surrounding the offense as a necessary part of the procedure leading to the imposition of the death sentence.

Thus the Supreme Court, which had invalidated death sentences imposed under a jury's unfettered discretion in *Furman*, held that the lack of exercise of any jury discretion is equally unconstitutional when imposing the death sentence. Carefully guided discretion exercised by the sentencing authority is required.

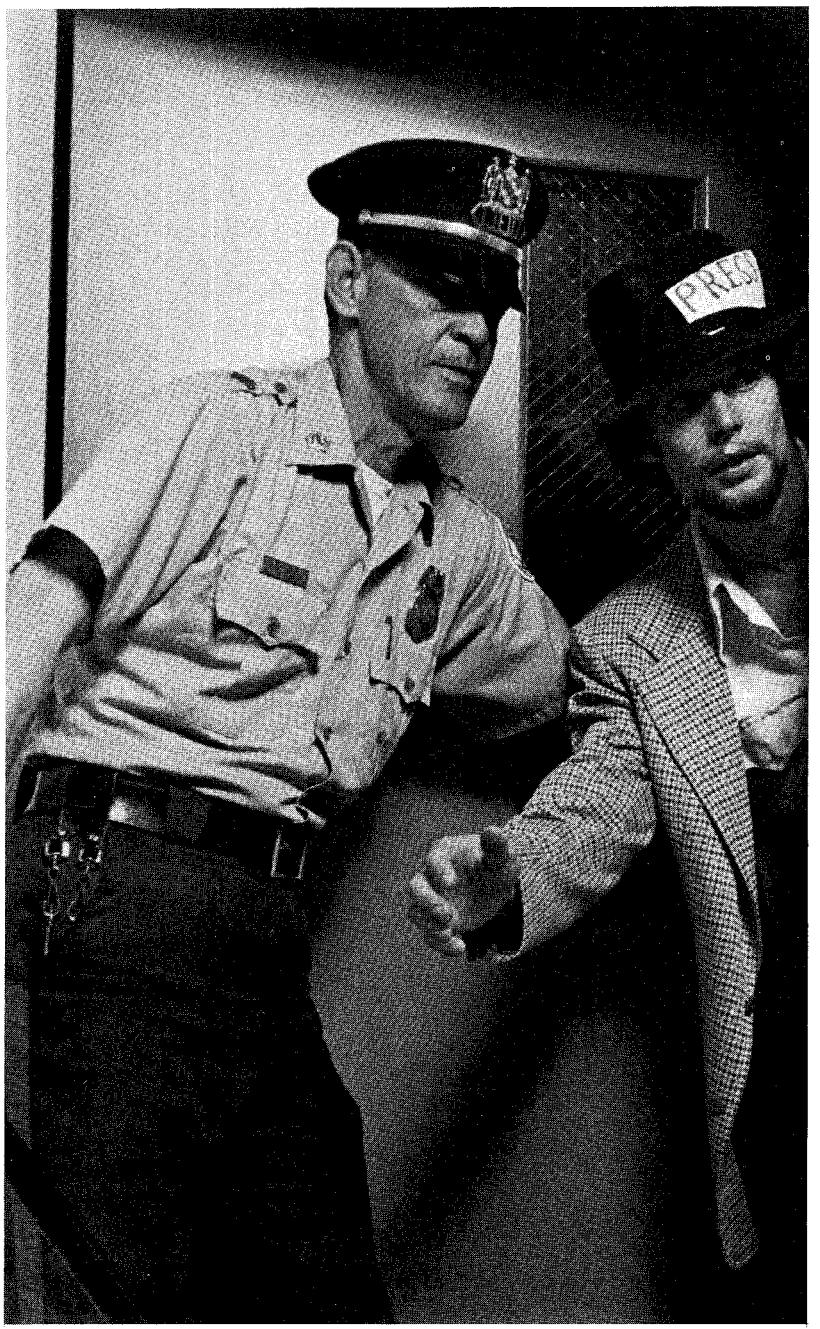
As a result of these decisions, it appears that Art. 27, §413, MD. ANN. CODE (1976 Repl. Vol.), contains a mandatory death penalty law which is unable to withstand a constitutional challenge. *See Woodson* and *Roberts*, supra. Under this section, a conviction for any one of the eight enumerated categories of first degree murder results in a mandatory death sentence. Under the statute, no consideration of the individual circumstances surrounding the defendant and the offense may enter into the sentencing process. Consequently, the statute violates the "Cruel and Unusual Punishment" Clause. Maryland can, of course, amend its law to conform with the approved standards in *Gregg, Proffitt, Jurek*, or the Model Penal Code and thereby enact a constitutionally valid capital punishment law.

Fair Trial/ Free Press

by Lindsay Schlottman

It had been a typical Saturday evening on October 18, 1975 in the farming town of Sutherland, Nebraska—until word began to spread of a mass murder. Towspeople were frightened as the search for the murderer began. Local, regional and even national reporters flooded the area, adding to the panic and confusion. Finally, early Sunday morning, a suspect named Charles Erwin Simants was arrested and charged with six counts of murder. Mr. and Mrs. Henry Kellie, their son David, and three grandchildren lay dead. The charges were amended later to include sexual assault.

Rumors began circulating of a confession by Simants. Because of his concern that Simants' trial be free of prejudicial publicity, the County Judge entered a restrictive order on October 22 banning full news coverage of the public preliminary hearing until a jury could be impaneled. Several press and broadcast associations, publishers, and individual reporters moved for leave to intervene in the state District Court, asking that the order imposed by the County Court be vacated. The District Judge granted this motion to intervene, and then entered his own restrictive order on October 27, detailing items not to be reported. The



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