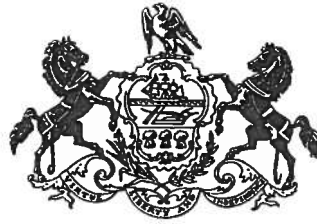


MEMO



DEC 22 2010

Senate of Pennsylvania

December 21, 2010

TO: ALL SENATORS
FROM: Stewart J. Greenleaf *Stewart*
SUBJECT: Cosponsorship – **Sentencing of juveniles who commit second degree murder**

In May the United States Supreme Court decided Graham v. Florida, holding “that for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole. This clear line is necessary to prevent the possibility that life without parole sentences will be imposed on juvenile nonhomicide offenders who are not sufficiently culpable to merit that punishment.” Citing an earlier case, Roper v. Simmons, the court concluded that “[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood, those who were below the age when the offense was committed may not be sentenced to life without parole for a nonhomicide crime.” In Roper the Supreme Court prohibited the death sentence for defendants who committed their crimes before 18 years of age.

At first blush the Graham decision does not seem to apply to juveniles sentenced in Pennsylvania for life without the chance of parole because in Pennsylvania only juveniles convicted of first or second degree murder may receive such a sentence. Second degree murder is often referred to as felony-murder because “it is committed while the defendant was engaged as a principal or an accomplice in the perpetration of a felony.” (18 Pa.C.S. §2502(b)) An offender convicted of second degree murder may not have been the actual killer. He may have been the lookout or getaway driver in a felony that resulted in a murder. He may not have known a homicide was going to happen. His crime is serious and deserves substantial punishment but, as a juvenile, he deserves a chance in the future for parole consideration. In Graham the Supreme Court stated “that defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers.”

I am introducing legislation providing the sentencing court with a new sentencing option for second degree murder, life with the possibility of parole. This sentence would not apply to all second degree murder cases involving juvenile defendants. The sentence would be an option in the case of an offender who was under 18 years of age when the crime was committed, was not the person who killed the victim, and did not contemplate that the victim would be killed. Life with the possibility of parole would mean that after serving a minimum prison sentence set by the judge, the offender would be eligible for parole consideration. This provision does not mean that the offender would be paroled. The Pennsylvania Board of Probation and Parole would decide whether the offender would be granted parole based on factors such as the offender’s prison behavior and rehabilitation, and input from the prosecutor, judge and victim’s family. In Graham the Supreme Court stated that the “Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does forbid States from making the judgment at the outset that those offenders never will be fit to reenter society.”

Pennsylvania has the dubious distinction of leading the nation and, for that matter, the world in the number of juveniles who are sentenced to life imprisonment without the chance of parole. The Senate Judiciary Committee held a public hearing in 2008 on the issue of juveniles who are sentenced to prison without the chance of parole. It is clear that juveniles have a lessened culpability because of a lack of maturity and poor decision making skills. Developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. Now, with the Roper and Graham decisions, I believe it is time for Pennsylvania to legislatively address the issue of juvenile lifers.

If you would like to cosponsor this legislation, please contact Pat Snively of my office by e-mailing her at psnively@pasen.gov.