

You Decide ...

State of Oregon v. Thorp 166 Or.App. 564

Facts

The victim in this case is a girl, Stroebel, and was born on July 25, 1983. The defendant is a boy, Thorp, born on July 15, 1980. On October 20 and 21, 1996, 13-year old Stroebel snuck out in the night and went to her 16-year old boyfriend's, Thorp's, house. Each time, she went into the bedroom where Thorp was sleeping, woke him up and engaged in sexual foreplay. Then the couple engaged in sexual intercourse.

Under ORS 163.365, "(a) person who has sexual intercourse with another person commits the crime of rape in the second degree if the other person is under 14 years of age." A defendant charged with rape in the second degree has a defense to the charge if the "victim's lack of consent was due solely to incapacity to consent by reason of being less than a specified age, (and the defendant) was less than three years older than the victim at the time of the alleged offense." Because Stroebel was under 14 and Thorp was more than three years older, Thorp was found guilty of second degree rape, a Measure 11 offense.

Oregon law says that the mandatory minimum sentence for rape in the second degree is 75 months. The trial court judge said that this constituted cruel and unusual punishment and instead imposed a sentence of 35 months.

Issue

Does the mandatory minimum prison sentence of 75 months for these crimes constitute cruel and unusual punishment under the circumstances?

Majority Opinion

Minority Opinion

You Decide ...

State of Oregon v. Thorp 166 Or.App. 564

Facts

The victim in this case is a girl, Stroebel, and was born on July 25, 1983. The defendant is a boy, Thorp, born on July 15, 1980. On October 20 and 21, 1996, 13-year old Stroebel snuck out in the night and went to her 16-year old boyfriend's, Thorp's, house. Each time, she went into the bedroom where Thorp was sleeping, woke him up and engaged in sexual foreplay. Then the couple engaged in sexual intercourse.

Under ORS 163.365, "(a) person who has sexual intercourse with another person commits the crime of rape in the second degree if the other person is under 14 years of age." A defendant charged with rape in the second degree has a defense to the charge if the "victim's lack of consent was due solely to incapacity to consent by reason of being less than a specified age, (and the defendant) was less than three years older than the victim at the time of the alleged offense." Because Stroebel was under 14 and Thorp was more than three years older, Thorp was found guilty of second degree rape, a Measure 11 offense.

Oregon law says that the mandatory minimum sentence for rape in the second degree is 75 months. The trial court judge said that this constituted cruel and unusual punishment and instead imposed a sentence of 35 months.

Issue

Does the mandatory minimum prison sentence of 75 months for these crimes constitute cruel and unusual punishment under the circumstances?

Majority Opinion, Paul DeMuniz for the Oregon Court of Appeals

No. Under the doctrines of judicial restraint and faithful adherence to a judge's constitutional duty to accord the legislature and the citizens of Oregon substantial deference in fixing the appropriate punishment for criminal behavior, the court will not change will of the people and Oregon law. Since the people and the legislature considered sentences, the court therefore finds that this punishment is not cruel or unusual. The trial court is reversed and a 75 month sentence is imposed.

Minority Opinion, Rick Haselton for the dissent

But for 10 days, the accident of their births, the defendant would not be in this position. Oregon voters likely did not consider this specific ramification of Measure 11 when it passed this Ballot Measure. No other state imposes a penalty so harsh. It is cruel and unusual and therefore violates Article I, section 16, of the Oregon Constitution: "Cruel and unusual punishments shall not be inflicted but all penalties shall be proportioned to the offense."

Procedural history of this case is as follows. **Oct. 1996** - Thorp has intercourse with Stroebel; trial court later finds him guilty of second degree rape, receives 35 mo. State appeals decision because judge sentenced Thorp to time that was less than statutory mandatory minimum of 75 mo. **Apr. 2000** - Oregon Court of Appeals agrees with the State and orders resentencing of mandatory minimum 75 mo. Thorp appeals to Oregon Supreme Court. **Oct. 2001** - Supreme Court dismisses review of case; decision of Court of Appeals stands.