

## Case Brief

### State v. Ferman-Velasco Supreme Court of Oregon (2002)

**Facts:** In 1996, the defendant was convicted of second degree rape and first degree sexual abuse for acts that he committed the previous summer. He was sentenced under ORS 137.700 (Measure 11) to two concurrent, mandatory minimum sentence of 75 months and 10 years of post prison supervision.

**Issue:** Is Measure 11 constitutional under Article 1, section 16 of the Oregon Constitution? Does Measure 11 violate the 8<sup>th</sup> amendment or the right to counsel or allocution?

**Arguments:** The defendant argues that the mandatory sentences he was given under Measure 11 violate the proportionality clause of Article I, section 16 of the Oregon Constitution which says, "Cruel and unusual punishment shall not be inflicted, but all penalties shall be proportioned to the offense." He claims his sentences are greater than the penalties given for non-Measure 11 crimes that, according to the sentencing guidelines, are more serious than his. He also contends the Measure 11 sentences violate his federal constitutional rights to equal protection, allocution, and counsel as well as the right to be free from cruel and unusual punishment since Measure 11 denies him the opportunity to seek a reduction of his sentence.

**Holding:** Measure 11 crimes are also covered by the general sentencing guidelines. The effect of this is that it allows judges to give longer sentences when it is allowed by the sentencing guidelines, but the judge cannot give a shorter sentence than Measure 11 mandates, even if the sentencing guidelines allow it. The defendant claims that his crime should carry the same sentence as for other crimes given the same degree of seriousness according to the sentencing guidelines. The court finds that the sentencing guideline's seriousness scale is supposed to reflect legislation. Here Measure 11 is the most current legislation regarding the seriousness of these crimes and so the sentencing guidelines should be changed to reflect Measure 11 and not interpreted to supercede it.

Challenges under U.S Constitution: The court rejects the defendant's contention that his sentence violates the Equal Protection Clause as that issue had already been decided in State v. Huddleston. The court holds that denying the defendant the opportunity to present mitigating evidence does not violate the 8<sup>th</sup> Amendment (cruel and unusual punishment) since the U.S. Supreme Court has only found mitigating evidence important to the 8<sup>th</sup> amendment in capital cases, which this is not. The court also rejects the claim that Measure 11 prevents the exercise of one's right to allocution. Allocution is the defendant's address to the court following a guilty verdict in which the defendant gives any reasons why the sentence should be reduced. The defendant doesn't claim that he wasn't given the opportunity to speak, but rather that the fact that a mandatory sentence was imposed means there is no chance that allocution could result in a shorter sentence and, therefore, the right to allocution is essentially denied. The court finds that there is nothing in the Constitution that says that the trial court has to be able to reduce an otherwise legal mandatory sentence in order for the right of allocution to exist. Similarly, the court holds that the right to counsel is not denied simply because there is nothing that counsel can say to get his client a lesser sentence for a Measure 11 crime. There is no constitutional right to have a mandatory sentence reduced based on the defendant's circumstances.