

Case Brief

State v. Thorp

Court of Appeals of Oregon (2000)

Facts: On October 20 and 21, 1996, the defendant's girlfriend came to the home of defendant, woke him up, and had sex with him. At the time the defendant was 16 and his girlfriend was 13. Under ORS 167.365, "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." The defendant was convicted of two counts of rape in the second degree. A defendant has a complete defense if the victim's lack of consent was due to incapacity to consent because of age and the defendant was less than three years older. Defendant was born on July 15, 1980 and his girlfriend was born July 25, 1983, making the defendant three years and 10 days older and this exception inapplicable. Neither the girlfriend nor her mother, who originally reported the incident, believes that a rape occurred. Only the constitutionality of the sentence and not the convictions are at issue here.

Issue: Does the minimum sentence of 75 months for second degree rape mandated by Measure 11 violate the "cruel and unusual punishment" clause of the Oregon Constitution?

Case History: At trial, evidence was introduced to show that defendant was a gang member with previous juvenile violations, including robbery, and that he may not have known his girlfriend's age at the time. Also, a psychologist testified that the girlfriend may have been psychologically harmed even if she does not believe that she was raped. Believing it would be cruel and unusual punishment, the trial court refused to sentence the defendant to the Measure 11 minimum sentence of 75 months. Instead, it sentenced him to 35 months.

Holding: The 75 month sentence is not cruel and unusual punishment. Article 1, Section 16 states, "Cruel and unusual punishments shall not be inflicted, but all penalties shall be proportioned to the offense." The test to determine whether a sentence violates this provision is whether the sentence is "so disproportionate to the offense as to shock the moral sense of all reasonable persons as to what is right and proper." Three principles are relevant in any proportionality challenge. First, the Oregon Supreme court has long held that establishing sentences for specific crimes is a function reserved for the state legislature. Second, successful challenges based on proportionality have been very rare. Third, the Constitution only prohibits sentences that are grossly disproportionate to the crime. Since Rape II typically does not involve force but rather a participant under age 14, the fact that the mother and girlfriend do not think a rape was committed is irrelevant. The facts in this case do not make this case all that rare since often statutory rape involves participants who are dating, and, while the defendant was just a few days over the three year period that would have provided him with a defense, the legislature had the right to establish such an exception and the defendant does not fall into it. "A sentence mandated by the legislature or citizenry, no matter how severe it may be perceived by some," is not unconstitutional unless it shocks the conscience of "all reasonable persons." Here, it cannot be said that the sentence is far out of step with sentencing in other states or previous Oregon law. Deference should be given to the legislature and people (through Measure 11 initiative) to determine a sentence as they did in the case of Second Degree Rape.

The U.S. Constitution does not contain a proportionality requirement so the Court has typically held that only extreme sentences that are “grossly disproportionate” to the crime are in violation of the 8th Amendment and that deference should be given to legislatures that have set sentencing guidelines.