

The State Of South Carolina

For State Supreme Court

Court Of Common Pleas

7th Judicial Circuit

**RECEIVED**

NOV 19 2015

**S.C. SUPREME COURT**

Darrell Williams,

Appellant

v.

The State Of South Carolina,

Respondent.

# 2015-000071

Appellant Pro Se Brief

## Question Presented

Whether South Carolina Code Ann. Sec. 17-25-45 Should Be Declared Unconstitutional Under Equal Protection Clause Of Federal / State Constitution

(A) South Carolina Must Institute Uniform State Wide Standards To Guide Solicitors In Deciding When They Should Seek A Sentence Of Life Without Possibility Of Parole

(B) The Need For Non-Arbitrary Standards In The Application Of The Sentence Of Life Without Possibility Of Parole Outweighs Any Benefits Of Unbounded Prosecutorial Discretion

(C) The Lack Of Standards To Guide Local Solicitors In Their Decisions As To Whether To Seek A Sentence Of Life Imprisonment Without The Possibility Of Parole Pursuant To South Carolina Code Of Laws Sec. 17-25-45; Inevitably Leads To The Arbitrary And Disparate Treatment Of Similarly Situated Defendants

Whether South Carolina Code Ann. Sec. 17-25-45 Should Be Declared Unconstitutional Under Equal Protection Clause Of Federal/State Constitution?

During Per hearings and Rule 59 motion, it was argued that South Carolina Code Ann. Sec. 17-25-45 (Cum. Supp. 14) is unconstitutional in violation of Equal Protection, Pursuant to the 7th, Sixth, Eighth, and Fourteenth amendments to the United States Constitution and Article 1 Sec. 3 and 7 of the Constitution of the State of South Carolina.

The State announced its intention to seek a sentence of life without the possibility of parole. "A sentence of life imprisonment without parole... can not be justified by the goal of rehabilitation. The penalty forswears altogether the rehabilitative ideal. By denying the defendant the right to reenter the community, the state makes an irrevocable judgment about that person's value and place in society" *Graham v. Florida*

Furthermore, "(n) states rejection of rehabilitation... goes beyond a mere expressive judgment. Defendants serving life without parole sentences are often denied access to vocational training and other rehabilitative services that are available to other inmates" *Graham, id.* at 18. Here, a sentence of life imprisonment without the possibility of parole can be equated to a death sentence where there are no charges, nor a conviction of offenses that resulted in the death of a human, or an attempt to take a human life. I will never set foot outside these prison walls during my lifetime.

The state's decision to pursue a sentence of life without parole places an extraordinary burden upon the court, the state, and the defense counsel to ensure the fairness, accuracy, and reliability of the trial and any subsequent sentencing proceeding. The touchstone of these protections is the Eighth Amendment to the United States Constitution and Article 1 Sec. 3 of the South Carolina Constitution.

## (c) South Carolina Must Institute Uniform Statewide Standards To Guide Solicitors In Deciding When They Should Seek A Sentence Of Life Imprisonment Without The Possibility Of Parole

Under the Equal Protection Principle that the United States Supreme Court announced in *Bush v. Gore*, 531 U.S. 98 (2000), the current and past law is unconstitutional because it fails to set forth uniform standards as to when a Prosecutor should seek life imprisonment without the Possibility of Parole. The intense reactions which greeted the Bush opinion notwithstanding, the Supreme Court's holding in that case is quite simple: When fundamental rights are involved, the equal Protection clause of the Fourteenth amendment requires that there be "Uniform" and "Specific" standards to prevent the arbitrary and disparate treatment of similarly situated People. *Bush*, id at 106. Because the Florida Supreme Court did not set forth such standards in its opinion ordering a recount, but instead announced only that ballots should be counted according to a vague "intent of the voter" standard, the recount would not respect the "equal dignity owed to each voter" *Bush*, id at 109.

The South Carolina sentencing system regarding a sentence of life imprisonment without the Possibility of Parole concerns a right even more fundamental than the right to vote, that is, the right to life and liberty. As was true in the Florida recount, in South Carolina the lack of a statewide standards to guide solicitors in determining which cases warrant seeking life imprisonment without the Possibility of Parole, inevitably leads to the disparate treatment of similarly situated People accused of eligible offenses. While the Supreme Court holding in *Bush v. Gore*, was expressly limited to the facts of that case, the equal Protection Principles announced by the court are sound and must be accorded deference as precedent. Those Principles require that the method of deciding which defendants may face life impi-

sonment without the Possibility Parole be subject to at least as much scrutiny as the Process of counting votes. The need for equality and non-arbitrariness when the state seeks to deprive a citizen of his life outweighs any benefits of unbridled Prosecutorial discretion.

(B) The need for non-arbitrary standards in the application of the sentence of life imprisonment without the Possibility of Parole outweighs any benefits of unbounded Prosecutorial discretion.

No argument for Prosecutorial discretion can justify a system that contains no safeguards to ensure that the lives of offenders are treated with equal dignity. Because the right to life and liberty is fundamental, if South Carolina is to maintain such a system, its Justifications for that system would have to Pass strict scrutiny. See, *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942) (reversing an order to sterilize a felon because the law allowing for sterilization did not Pass strict scrutiny, as it treated larceny and embezzlement differently despite their being essentially the same crime)

In order to Pass strict scrutiny, the state would have to show that allowing Prosecutors unbridled discretion as to when to seek the death Penalty is necessary to achieve a compelling Governmental interest. Our constitutional structure does not bar courts from evaluating the constitutionality of the system by which solicitors decide whether or not to seek a sentence of life imprisonment without the Possibility of Parole. Neither do the arguments in favor of Prosecutorial discretion that have been made over the years justify the arbitrary imposition of a sentence of life imprisonment without the Possibility of Parole.

The separation of Powers doctrine does not bar courts from requiring some restraint on Prosecutorial discretion. Courts can and

do evaluate Particular Prosecutorial decisions for Equal Protection violations; see E.G., *United States v. Armstrong*, 517 U.S. 456 (1996) (declining to allow discovery on defendant's selective prosecution claim but allowing that such discovery could be allowed if Petitioner had shown that such Government had declined to prosecute similarly situated persons of other races.); *United States v. Batchelder*, 442 U.S. 114, 125 (1979) (noting that while it is broad, prosecutorial discretion is nonetheless "subject to constitutional constraints")

In selective-prosecution and vindictive prosecution cases, courts are deferential to prosecutorial decisions and require "clear and convincing evidence" to rebut the presumption that prosecutors have acted legally. *Armstrong*, id. at 464 (quoting); *United States v. Chemical Foundation*, 272 U.S. 1, 14-15 (1926) Because of concerns about the separation of powers, courts refuse to force district attorneys and U.S. attorneys to prosecute particular offenders, as doing so would "encroach on the prerogatives of another department of the Government" *United States v. Cox*, 342 F.2d 1167 (1965). However, "there is an enormous difference between, on the one hand, forcing a solicitor to charge or stripping him of authority to charge and, on the other, regulating that authority..." James Vorenberg, *Decent Restraint of Prosecutorial Power*, 94 *Harv. L. Rev.* 1521, 1546 (1981)

Thus, my argument in Rule 59 (see Attached) or addressed at hearing is not challenging a particular decision of an individual solicitor as vindictive or selective or discriminatory, nor is it being asked that this court force a solicitor to file charges in a particular case. Rather, all that is being alleged is the laws of this state violate the Equal Protection Clause by their failure to establish standards according to which solicitors are to decide whether to seek a sentence of life imprisonment without the

Possibility of Parole. "The law has long recognized the distinction between Judicial usurpation of discretionary authority and Judicial review of the statutory and constitutional limits to that authority" *Nader v. Saxbe*, 499 F.2d 676, n.19 (1974). After conducting such a review, this court must conclude that South Carolina's system of determining whether offenders will face a sentence of life imprisonment without possibility of Parole violates the constitutional Guarantee of equal Protection.

As the Supreme Court noted in *Bush v. Gore*, despite the "limits on Judicial authority" imposed by the constitution, when constitutional violations are brought to the attention of the courts, "it becomes our unsought responsibility to resolve the federal and constitutional issues the Judicial system has been forced to confront." *Bush*, id. at 111. When faced with a constitutional violation, courts can not wait for the legislature to take action.

The frequently cited reasons for allowing solicitors broad discretion as to what charges to bring can not justify a system which allows some defendants lives and liberties to be arbitrarily valued less than others. Because of the fundamental nature of the right to life and liberty, such standards would simply provide "some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied." *Bush*, id. at 109.

Other rationale for broad prosecutorial discretion likewise fail to excuse the disparities and arbitrariness of South Carolina's current system. Such considerations as the need for flexible use of prosecutorial resources based on changing enforcement priorities or the loss of deterrence which might result from revealing prosecutorial motives are not "compelling governmental interests" which can overcome the need for non-arbitrariness when the state decides whether to seek to take a

defendants life and liberty. While such explanations may justify broad discretion in some areas of the criminal justice system, they can not do so when life and liberty is at stake.

c) The Lack of standards to Guide Local Solicitors In Their Decisions As To Whether To Seek A Sentence Of Life Imprisonment Without The Possibility Of Parole. Pursuant To South Carolina Code Of Laws, Sec. 17-25-45(2014) as amended, Inevitably Leads To The Arbitrary And Disparate Treatment Of Similarly Situated Persons/defendants.

It is not necessary to imagine what disparities might result from a system wherein 16 local solicitors each used different standards for determining whether to seek a sentence of life imprisonment without the possibility of parole, pursuant to South Carolina Code of Laws, Sec. 17-25-45 (014) because that is the system that exists in South Carolina today. South Carolina law provides no standards to guide solicitors in their decisions as to when to seek a sentence of life without parole; instead, solicitors in each judicial circuit make such decisions on their own, according to unwritten and widely varying standards. The result is that whether a person will face a sentence of life without parole depends largely on arbitrary factors such as the county in which the crime occurred, the race of the victim, and even more disturbing, the race of defendant. See, Social And Moral Cost Of Mass Incarceration In African American Communities, 56 Stan. L. Rev. 1271 (04)

Even more disturbing than the differences among circuit solicitors approaches to deciding whether to seek a sentence of life imprisonment are the racial disparities evident in their decisions. These racial disparities are not just a problem in South Carolina, but across the nation. A study done by the General Accounting Office found that 82% of studies done nation-

wide showed that the race of the victim influenced the likelihood of a defendant being charged, and these outcomes show intention to seek life without Parole sentence was more likely in the case of a white victim than in case of a black victim. This has become known as the race-of-victim effects.

Similarly, while some evidence concerning the intent of the solicitor to seek a life sentence reveals that the race of defendant alone does not result in unwarranted disparity, other evidence is to the contrary. It is at least true that the race of the defendant, when combined with the race of the victim, yields significant disparities in the application of a sentence of life without Parole.

Wherefore, it is Prayed court will Grant Writ

Date: 12th day of November, 2015

With kind Regards;  
s/ Darrell Williams

Darrell Williams / Pro Se

The State Of South Carolina  
Richland County Courthouse  
COURT OF Common Pleas

Darrell Williams,

Applicant,

~against~

The State Of South Carolina,

Respondent.

Motion To Alter Or Amend

Judgment

S.C. Civil Procedure Rule

2015 NOV -6 AM 11:11  
JEANETTE W. HOBRIDE  
S.C.P. & C.S.

RICHLAND COUNTY  
FILED

#2013-CP-32-7117

ADCM

Please Take Notice, that the above-named applicant files motion to Alter or Amend court Judgment after a hearing on the 2nd day of September, 2014 denying Post-conviction relief? Whereas, the following grounds were not addressed within order as follows:

Question One:

Whether Applicant Rights Were Violated Under Equal Protection Clause when No Standard Exist To Guide Solicitors Under Section 17-25-45?

At the hearing, it was argued that sec. 17-25-45 is unconstitutional as it violates equal Protection clause of the Fourteenth amendment, because there

there is no standard state wide as to when solicitors should seek LWOP. See Bush v. Gore, 531 U.S. 98 (2000) which held that:

"When fundamental rights are involved, the Equal Protection Clause of the Fourteenth Amendment requires that there be uniform and specific standards to prevent the arbitrary and disparate treatment of similarly situated people."

Bush, id at 106.

Accordingly, whether a person was served with LWOP or not for a tripping event depends on which county they are in, and which solicitor was assigned to their case. The law making it discretionary further complicated the issue.

While the Bush court acknowledged, that the right to vote was not contained in the text of the constitution. The right to life and liberty is contained in the Fourteenth Amendment. Because this is a fundamental right, the equal protection clause applies. See, Broadnax v. State, Opinion # 5071

### Question Two:

Whether Sec. 17-25-45 Is Unconstitutional When Disparity And Disproportionality In Sentencing For LWOP?

The court is asked to declare, sec. 17-25-45 unconstitutional because the imposition of sentence of life without parole is disproportionate and disparate

Life without Parole depends largely on arbitrary factors, such as the county in which crime occurred, the race of victim, and even more disturbing, the race of defendant. Moreover, more disturbing than differences among circuit solicitors approach to determine whether to seek a LWOP sentence, are the racial disparities in these decisions. These racial disparities are not just in this state but across the nation. A General Accounting Office study found 82% of studies done nationwide, showed that race of the victim influenced likelihood of defendant being charged. Similarly, since the effective date of Sec. 17-25-45, the Prison Project Initiative/Sentencing Project and United States Justice Department have found that life without Parole was imposed on 67.3% of black defendants while only 10% of non-whites. Through 1995 98.4% of those serving life sentences under Georgia's "Two Strikes Your Out Law" were black. The Georgia Supreme Court ruled that "These statistics presented a prima facie case of discrimination and invalidated the (Two Strikes Your Out Law) See, Stephens v. State, 1995 WL 116292 (GA, 1995) The importance of race as a factor in the imposition of LWOP (Life Without Parole) sentence is well documented.

### Question Three:

Whether Guilt Was Established Beyond A Reasonable Doubt At Trial?

All trial defense argued, that state failed to prove beyond a reasonable doubt this crime was committed at night or satisfied

the element of this offense (Tr. Tr. PG 461 lines 17-25; PG 462 lines 1-16) and state in its rebuttal argued to the contrary (Tr. Tr. PG 468; lines 1-9) but trial testimony as well as law refutes this. Thus, victim testified it was still light outside (Tr. Tr. PG 303; lines 8-13) and this refutes state argument at trial that:

"We have the victim stating he left at 8:30, so nighttime was shortly thereafter and whether or not the defendant and whether or not he remained when that nighttime fell is a question for the jury."

Tr. Tr. PG 468; lines 1-8

A) I do not recall that I walked throughout the house; it was daylight. I was coming home to have a light dinner before going out.

Tr. Tr. PG 301; line 25; PG 302; lines 1-2

Q) Do you recall whether it was daylight or dark at that time?

A) It was still light.

Q) Do you recall how light it was when you left?

A) Light enough so that I didn't need the lights on my car to drive to where I was going.

Tr. Tr. PG 303; lines 8-13

This testimony refutes any notion of me entering or remaining in the night, which is an essential element of crime and victim supports my argument state failed to prove nighttime element. See, State v. Bannister, 509 S. E. 2d 807 (1998); State v. Stalbers, 525 S. E. 2d 260 (1999) At the close of

trial. defense argued that element of sec. 16-11-311(A) was defined as:

"... We're talking about when there is, as they say, when a person can not -- You have to use artificial light or some other type of light in order for a person to see himself or for another person to view him."

Tr. Tr. PG 462 lines 4-8

This is a correct statement of law, and when as herein the state can not establish the element. Then state is precluded from enhancing crime, from a non-violent to violent and guilt has not been established. Nor has state established proof on other elements, which in conjunction with statute is a requirement.

Wherefore, it is prayed court grant motion.

Date: 4th day of November, 2014

Respectfully Submitted:

Darnell Williams

Darnell Williams / B19930  
Lee Correction Institution  
990 Wisacky Highway  
Bishopville, S.C. 29010

# The Sentencing Project, *Life Goes On: The Historic Rise of Life Sentences in America* (2013)

## LIFE SENTENCES TODAY

Life sentences in America today stand at an unprecedented level: as of 2012, 159,520 people in prison were serving a life sentence and 49,081 (30.8%) of them have no possibility for parole. Nationally, one in every nine people in prison today is serving a life sentence.<sup>10</sup> Though LWOP is available in nearly every state,<sup>11</sup> such prisoners are disproportionately represented in Florida, Pennsylvania, Louisiana, California, and Michigan. Combined, these five states account for over half (57.7%) of all LWOP sentences nationwide. In seven states—Alabama, California, Massachusetts, Nevada, New York, Utah, and Washington—more than 15% of the prison population is sentenced to life.<sup>12</sup> Additionally, in 22 states and the federal government, at least 35% of the lifer population is ineligible for parole.<sup>13</sup>

Despite a shift toward determinate sentencing in recent decades, many states maintain some form of indeterminate sentencing framework that is applied to parole-eligible lifers. Offenders who fall within this structure can potentially earn parole within a range of years; in some states, these ranges include an upper limit of natural life. For example, in Colorado trial judges can sentence people convicted of a sex offense to an indeterminate

sentence that ranges from a minimum of one day to a maximum of life imprisonment.<sup>14</sup> In Vermont, failure to register as a sex offender can, in some instances, trigger a sentence of five years to life and prisoners are considered lifers until they are released.<sup>15</sup> Some empirical evidence suggests that prisoners serve longer terms in states with indeterminate sentencing schemes that have discretionary parole, especially for those convicted of violent offenses.<sup>16</sup> The large number of parole-eligible lifers in some of these states may partially be explained by indeterminate sentencing structures that allow for a maximum term of life and a minimum term as short as five years.

Regardless of whether a state has an indeterminate or determinate sentencing structure, excessively long sentences are available and used with increasing regularity. However, the alternative is also true: sentencing reforms that reflect fairness, proportionality, and a realistic opportunity for release can be incorporated into either a determinate sentencing structure or one that relies on a range of years to allow for individual tailoring.

<sup>10</sup> The continued rise in lifers presents one aspect of the issues associated with the expansion of lengthy sentences. Lengthy sentences other than those identified as lifelong sentences are also a common feature of the American criminal justice system. An example would be a sentence of 120 years. Data on the extensive use of these "virtual life" sentences has not yet been systematically collected but would likely show that sentences spanning many decades, easily exceeding an average lifespan, are increasingly common.

<sup>11</sup> Alaska is the exception.

<sup>12</sup> Utah's indeterminate sentencing system allows a range of up to life for all first degree felony convictions. Though most people are eventually released, there remains the potential for lifelong incarceration. During any year, about 5 to 6% of the total releases in Utah are offenders serving 5-to-life sentences.

<sup>13</sup> The states are Arkansas, Delaware, Florida, Illinois, Indiana, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Virginia, and West Virginia.

<sup>14</sup> C.R.S.A. § 18-13-904. This law went into effect in 1968.

<sup>15</sup> 8 V.S.A. 5411d, enacted 2003.

<sup>16</sup> Petersilia, J. (2003). *When Prisoners Come Home: Parole and Prisoner Reentry*. Oxford: Oxford University Press.

**Table B. Distribution of Life and LWOP Sentences by State, 2012**

State	Life with Parole	LWOP	2012 Total	Prison Population	Percent of Prison Population
Alabama	3,811	1,507	5,318	32,038	16.6%
Alaska	0	0	0	3,899	0.0%
Arizona	1,053	441	1,494	39,885	3.7%
Arkansas	872	528	1,400	14,644	9.6%
California	35,759	4,803	40,562	133,883	30.1%
Colorado	2,015	608	2,623	20,628	12.7%
Connecticut	289	70	359	12,549	2.9%
Delaware	142	388	528	4,003	13.2%
Florida	4,157	7,992	12,149	99,866	12.2%
Georgia	7,125	813	7,938	58,248	14.1%
Hawaii	385	47	412	3,585	11.6%
Idaho	402	122	524	7,333	7.1%
Illinois	1,141	1,800	2,741	48,427	5.7%
Indiana	129	113	242	28,270	0.9%
Iowa	45	635	680	8,244	8.2%
Kansas	1,040	21	1,061	9,318	11.4%
Kentucky	809	99	908	22,411	4.1%
Louisiana	20	4,837	4,857	40,170	11.9%
Maine	4	55	59	2,125	2.8%
Maryland	2,080	380	2,470	21,398	11.5%
Massachusetts	830	1,045	1,875	10,178	18.4%
Michigan	1,502	3,635	5,137	43,444	11.8%
Minnesota	428	102	528	9,501	5.6%
Mississippi	555	1,518	2,073	22,187	9.3%
Missouri	1,744	1,063	2,807	31,057	9.0%
Montana	44	53	97	2,483	3.9%
Nebraska	95	238	331	4,782	6.9%
Nebraska	2,228	481	2,719	12,839	21.5%
New Hampshire	134	79	213	2,614	8.1%
New Jersey	1,098	70	1,168	23,810	4.9%
New Mexico	408	0	408	6,847	6.1%
New York	8,999	248	10,245	54,397	18.8%
North Carolina	1,882	1,228	3,110	37,383	8.3%
North Dakota	38	27	65	1,538	4.2%
Ohio	5,887	408	6,075	50,864	11.9%
Oklahoma	1,735	780	2,515	26,257	9.6%
Oregon	627	180	807	14,212	5.7%
Pennsylvania	2	5,102	5,104	51,184	10.0%
Rhode Island	175	32	207	2,417	8.6%
South Carolina	1,231	998	2,219	22,587	9.8%
South Dakota	0	181	181	3,848	5.0%
Tennessee	1,908	317	2,225	20,079	11.1%
Texas	8,493	538	9,031	150,782	6.0%
Utah	1,943	105	2,048	7,025	29.2%
Vermont	107	14	121	2,084	5.8%
Virginia	1,371	774	2,145	37,182	5.8%
Washington	2,000	823	2,823	17,031	15.4%
West Virginia	359	278	635	7,038	9.0%
Wisconsin	858	228	1,185	22,041	5.4%
Wyoming	154	28	182	1,987	9.2%
FEDERAL	1,382	4,058	5,420	218,830	2.5%
TOTAL	110,439	49,081	159,520	1,508,934	10.6%

Notes: Hawaii and Virginia did not respond to several requests for data in 2012; therefore, 2008 figures are provided for these states. The federal system eliminated parole in 1987; the parole-eligible lifers listed here were convicted before 1987.

## CRIME OF CONVICTION

Life sentences were originally limited to those convicted of only the most serious crimes, such as homicide, particularly as an alternative to the death penalty, but their use has expanded considerably over time to include a greater range of offenses.<sup>17</sup> While homicide remains the offense for which a majority of lifers are sentenced, life sentences are today authorized for assault, robbery, sex-related crimes, drug offenses, and even some property offenses.

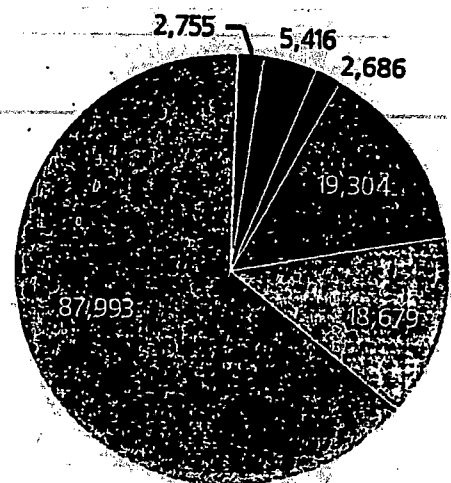
In our survey of state corrections agencies, we requested information about the crime of commitment for each person serving a life sentence.<sup>18</sup> Overall, 64.3% (87,933) of those serving a life sentence had been convicted of a homicide. However, it is notable that more than 10,000 people serving life sentences have been convicted of a nonviolent crime, including more than 2,500 for a drug offense and 5,400 for a property crime.

**Table C. National Distribution of Crime of Conviction among Lifers**

Crime	% Life-Sentenced
Homicide	64.3%
Sexual Assault/Rape	13.7%
Aggravated Assault/Robbery/ Kidnapping	14.1%
Drug Offense	2.0%
Property Offense	4.0%
Other	2.0%

Clarence Aaron was a 23-year-old college student and athlete at the time of his arrest in 1993. He had served as a liaison between two drug dealers and even though he was not present or knowledgeable about their drug transaction, Aaron was convicted in federal court of conspiracy. Because of federal mandatory minimum sentencing laws, Mr. Aaron was held responsible for the total amount of drugs involved in the offense and sentenced to three life terms in prison. He has been incarcerated for more than 20 years and is now in his mid-40s. Despite a recommendation for commutation and immediate release by the prosecutor and sentencing judge in this case, Mr. Aaron's petition for clemency has failed to receive support from the Office of the Pardon Attorney at the U.S. Department of Justice, but growing media attention around the case has led the White House to note that there is an ongoing review of his application.

**Figure 1. Crime of Conviction for Life-Sentenced Population**



- Homicide
- Sexual Assault/Rape
- Agg. Assault/Robbery/Kidnapping
- Drug Offense
- Property Offense
- Other

<sup>17</sup> Capers, B. (2012). *Defending Life*. In Ogletree, C. J. and A. Sarat. *Life Without Parole: America's New Death Penalty?* New York: New York University Press. Pp.167-189.

<sup>18</sup> Offense data was not provided for approximately 23,000 prisoners, or 14.3% of the total number of people serving life sentences.

In eight states, more than 30% of the life without parole population has been convicted of a non-homicide offense. In Oklahoma, which has the third highest rate of incarceration in the nation and where 27% of the prisoners overall have been convicted of a drug offense, 64% of the LWOP inmates are drug offenders. This relatively high percentage of prisoners serving LWOP for a nonviolent offense is likely due to the state's especially harsh drug laws that require a life-without-parole-sentence for anyone with two previous felony convictions.

The U.S. Supreme Court has reviewed the constitutionality of life without parole for non-homicide offenses on different occasions, most recently as the sentence pertains to individuals whose offense occurred before they turned 18 years old.<sup>19</sup> In *Graham v. Florida*, the Court concluded that LWOP sentences for persons who were under 18 at the time of the crime amount to cruel and unusual punishment. While the ruling is limited to juveniles, it raises anew the question of whether it is ever appropriate to sentence individuals to life with no possibility of release when their crime was not a homicide.

## RACE AND ETHNICITY OF LIFE-SENTENCED INDIVIDUALS

It is widely established that racial and ethnic minorities are more likely to enter the criminal justice system and that racial and ethnic differences become more pronounced at the deeper stages of the system. In 2009, African Americans and Latinos comprised over 60% of people in prison, and black males were incarcerated in state and federal prisons at 6.4 times the rate of white non-Hispanic males.<sup>20</sup>

Racial disparities are evident among those serving life as well. Nationally, almost half (47.2%) of life-sentenced inmates are African American, though the black population of lifers reaches much higher in states such as Maryland (77.4%), Georgia (72.0%), and Mississippi (71.5%). In the federal system, 62.3% of the life-sentenced population is African American. Non-whites constitute nearly two-thirds of the total population serving life sentences.

Consider the case of 63-year-old Oklahoma lifer Larry Yarbrough, a married restaurant owner with five children and 13 grandchildren. Oklahoma's tough drug law resulted in sentencing Mr. Yarbrough to life without parole for selling an ounce of cocaine and three marijuana cigarettes. He has been in prison for 18 years. The Oklahoma Board of Pardons and Parole has repeatedly recommended his release, pointing to his successful rehabilitation in prison and service to the community's blind and disabled, a clean disciplinary record throughout his sentence, and the unnecessary cost of continuing to incarcerate him. The Parole Board most recently recommended a sentence commutation in 2011, which was again denied by the Governor.

Table D. States with More than 30% of LWOP Population Convicted of a Non-Homicide

State	Percent Convicted of a Non-Homicide
Idaho	54.1
Washington	48.2
Alabama	39.2
Georgia	38.7
Kansas	38.1
Delaware	36.3
South Carolina	36.2
Louisiana	33.2

<sup>19</sup> *Graham v. Florida*, 130 S.Ct. 2011 (2010).

<sup>20</sup> Mauer, M. (2013). *The Changing Racial Dynamics of Women's Incarceration*. Washington, D.C.: The Sentencing Project.

Table E. Racial Distribution of Life Sentenced Population

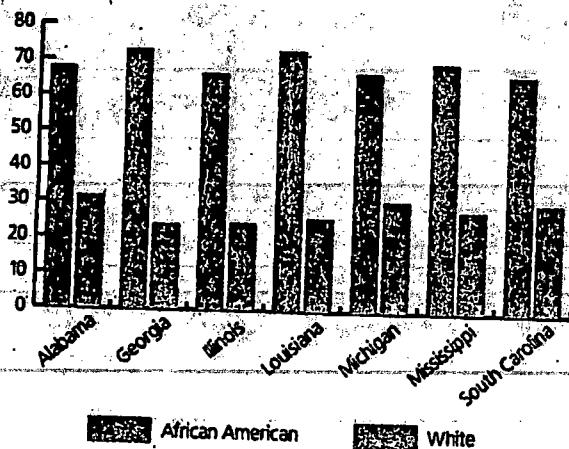
State	Life Population	Percent Black	Percent White	Percent Other
Alabama	5,318	85.8%	34.0%	0.2%
Arizona	1,494	19.5%	43.7%	38.8%
Arkansas	1,400	53.1%	45.2%	1.7%
California	40,362	34.2%	22.1%	8.0%
Colorado	2,621	19.6%	50.5%	34%
Connecticut	359	52.0%	27.0%	0.6%
Delaware	526	64.8%	35.0%	0.2%
Florida	12,149	54.1%	42.0%	3.9%
Georgia	7,938	72.0%	24.8%	0.6%
Hawaii	412	6.1%	23.1%	68.7%
Idaho	524	2.6%	78.9%	6.1%
Illinois	2,741	52.0%	32.8%	0.9%
Indiana	242	35.5%	59.5%	0.8%
Iowa	680	26.6%	70.9%	2.5%
Kansas	1,081	39.0%	58.2%	2.8%
Kentucky	908	27.3%	70.4%	2.3%
Louisiana	4,657	73.4%	28.2%	0.4%
Maine	59	1.7%	98.6%	1.7%
Maryland	2,470	77.4%	21.7%	0.6%
Massachusetts	1,975	35.9%	55.8%	8.8%
Michigan	5,137	64.8%	34.0%	1.0%
Minnesota	528	37.5%	62.5%	10.0%
Mississippi	2,073	71.5%	27.6%	0.7%
Missouri	2,807	52.3%	48.9%	0.8%
Montana	97	0.0%	73.4%	28.6%
Nevada	331	32.6%	60.4%	8.0%
New Hampshire	2,719	25.5%	57.9%	18.8%
New Jersey	213	5.2%	91.1%	3.8%
New Mexico	1,186	61.7%	25.0%	13.2%
New York	408	10.9%	38.2%	7%
North Carolina	10,245	60.5%	24.5%	15.1%
North Dakota	3,110	58.8%	34.8%	5.1%
Ohio	65	7.7%	72.3%	20.0%
Oklahoma	6,075	52.0%	44.7%	3.2%
Oregon	2,515	32.2%	53.6%	8.0%
Pennsylvania	807	12.1%	72.9%	5.2%
Rhode Island	5,104	64.5%	25.7%	1.2%
South Carolina	207	28.0%	45.9%	1.9%
South Dakota	2,219	64.9%	34.2%	0.9%
Tennessee	181	7.2%	69.6%	23.2%
Texas	2,225	49.8%	49.7%	0.6%
Utah	9,031	40.5%	34.3%	2.6%
Vermont	2,048	6.7%	84.5%	28.9%
Virginia	121	8.3%	86.8%	4.1%
Washington	2,145	41.9%	38.6%	0.5%
West Virginia	2,823	18.4%	74.6%	8.1%
Wisconsin	635	14.6%	81.1%	3.5%
Wyoming	1,185	45.1%	52.2%	2.6%
FEDERAL	182	6.6%	74.2%	6.6%
TOTAL	5,420	82.3%	33.0%	4.0%
TOTAL	159,520	47.2%	34.7%	6.0%

Note: Most states provided the ethnicity of "Hispanic" separately from race categories. In cases where "Hispanic" was provided as a mutually exclusive category, we divided the number of Hispanics by their representation in the general population, 2.5% Black, 53% White, and 44.5% Other, as reported in the 2010 U.S. Census (Jones, K. R., and Ramirez, R. R. (2011). *Overview of Race and Hispanic Origin: 2010*. Washington, DC: U.S. Census Bureau. See page 6. Tennessee did not provide data in 2012 other than Life and LWOP totals. We used the proportions of information obtained in 2008 to arrive at current estimates for race, gender, ethnicity, and age. Alaska does not have Life or LWOP sentences so it is excluded from this table.

Sixteen percent of the people serving life sentences nationwide are Latino, with the highest concentrations in New Mexico (44.1%), California (35.7%), Arizona (30.9%), and Colorado (26.4%).

Concerns about racial disparity become even more significant when examining the racial groups of those serving life without parole. While 47.2% of the lifer population is African American, 58% of LWOP prisoners are African American and reaching at least two-thirds of the LWOP population in seven states.

Figure 2. Racial Distribution of Prisoners Serving LWOP in Seven States



These figures mirror the broader pattern in the criminal justice system in which blacks are represented at an increasingly disproportionate rate across the continuum from arrest to incarceration. African Americans comprise 12% of the general population but 28% of total arrests, and 38% of those convicted of a felony in state court and in state prison.

Table F. Latinos as a Proportion of Life Sentenced Population

State	Percent Latino
Arizona	30.8%
Arkansas	0.9%
California	35.7%
Colorado	26.4%
Connecticut	19.5%
Florida	10.4%
Georgia	2.8%
Hawaii	3.4%
Idaho	14.1%
Illinois	14.6%
Indiana	4.1%
Iowa	6.3%
Kansas	10.0%
Kentucky	0.7%
Louisiana	0.1%
Maine	1.7%
Massachusetts	18.4%
Michigan	0.1%
Minnesota	4.7%
Mississippi	0.1%
Missouri	1.4%
Nebraska	8.8%
Nevada	11.3%
New Hampshire	2.6%
New Jersey	8.7%
New Mexico	44.1%
New York	25.0%
North Carolina	1.5%
North Dakota	6.2%
Ohio	2.3%
Oklahoma	5.4%
Oregon	9.8%
Pennsylvania	8.5%
Rhode Island	23.2%
South Carolina	0.8%
South Dakota	1.7%
Tennessee	1.3%
Texas	22.3%
Utah	20.8%
Vermont	3.3%
Virginia	0.2%
Washington	11.8%
West Virginia	0.6%
Wisconsin	9.3%
Wyoming	12.6%
FEDERAL	16.3%
TOTAL	16.4%

Note: Ethnicity data were not provided for Alabama, Delaware, Maryland, and Montana.

# FACTS ABOUT PRISONS AND PEOPLE IN PRISON

The number of people incarcerated in state and federal prisons increased by 13% from 1,317,300 to 1,483,900 between 2000 and 2012, although the totals have declined modestly since 2009.

In addition to the nearly 1.5 million people in state and federal prisons, there were 744,500 people in local jails in 2012, yielding a total incarcerated population of 2.2 million.

Between 2002 and 2011, state prison populations grew at an average rate of 0.8% per year, and the federal population at 3.2%.

Between 2009 and 2012, the number of people in American prisons decreased by 2.8%.

1 in every 108 adults in America was in prison or jail in 2012.

4,781,300 people were on probation or parole in 2012, for a total of 6,937,600 people in America under some form of criminal justice supervision.

The 2011 U.S. incarceration rate of 716 people per 100,000 population is the highest in the world.

## CHARACTERISTICS OF PEOPLE IN PRISON

93% of people in prison are male, 7% are female.

103,722 women were in state or federal prison in 2012.

38% of people in state or federal prisons were black, 35% were white, and 21% were Hispanic in 2011.

1 in every 13 black males ages 30 to 34 was in prison in 2011, as were 1 in 36 Hispanic males and 1 in 90 white males in the same age group.

Black males have a 32% chance of serving time in prison at some point in their lives; Hispanic males have a 17% chance; white males have a 6% chance.

In 2011, the rate of prison incarceration for black women was 2.5 times higher than the rate for white women; the rate for Hispanic women was 14 times higher.

Nearly half (47%) of people incarcerated in state prisons in 2011 were convicted of non-violent drug, property, or public order crimes.

People convicted of drug offenses were 17% of state inmates in 2010 and 48% of federal prison inmates in 2011.

Source: Bureau of Justice Statistics

January 2014