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Jury Role in Raising Sentences Affirmed *Ruling May Affect States' Procedures*

By Charles Lane, *Washington Post* Staff Writer

A bitterly divided Supreme Court ruled yesterday that only juries, not judges, may increase criminal sentences beyond the maximums suggested by statutory guidelines, a decision that throws into doubt sentencing procedures used by nine states and possibly the federal government.

By a vote of 5 to 4, the court said a trial judge in Washington state violated the Constitution when he sentenced a convicted kidnapper to 90 months in prison rather than the 53-month maximum prescribed by state law. The judge was following a provision of the law that permits judges to impose higher sentences when they find that the facts warrant harsher punishment.

But the court said the Sixth Amendment guarantee of a jury trial in felony cases means that any facts that would result in a sentence above the range of sentences specifically mentioned in the law must be found by a jury beyond a reasonable doubt.

"When a judge inflicts a punishment that the jury's verdict alone does not allow . . . the judge exceeds his proper authority," Justice Antonin Scalia wrote for the majority.

The ruling was the latest application of the court's 2000 ruling in *Apprendi v. New Jersey*, in which the court roiled criminal law by holding for the first time that factual findings a court uses to increase sentences must be made by a jury rather than by a judge.

The court used *Apprendi* in 2002 to strike down state laws that call for judges, rather than juries, to decide between life imprisonment and death in capital cases. But in a separate case yesterday, the court limited the impact of that ruling by declaring that it would not apply retroactively.

The decision yesterday in *Blakely v. Washington*, No. 02-1632, may be *Apprendi*'s most significant consequence yet. It poses a direct challenge to the past quarter-century's worth of sentencing reform at both the state and federal levels.

In response to concerns that similar crimes were being punished much differently by judges in different courts, the federal government and some states replaced previous

sentencing systems, under which juries determined defendants' guilt or innocence and judges determined sentences pretty much as they saw fit.

The new sentencing guidelines typically established a range of prison time for various crimes, with judges permitted to "depart upward" from that range if they find "aggravating factors" deserving of harsher punishment.

Federal sentencing guidelines were established in 1987, and Washington is one of nine states that have similar systems. The Bush administration supported Washington in the case, out of concern that federal guidelines be kept intact.

"If defendants asserted the right this decision gives them, a very large fraction of the sentences in federal criminal cases and probably a sizable number of criminal cases in states with state sentencing guidelines would be unconstitutional," said William J. Stuntz, a professor of law at Harvard University who specializes in criminal issues.

In a strongly worded dissenting opinion, which she read from the bench in what was, for her, an unusual display of disagreement with the majority, Justice Sandra Day O'Connor said that "the practical consequences of today's decision may be disastrous."

"If the choice is between adopting a balanced case-by-case approach that takes into consideration the values underlying the Bill of Rights as well as the history of a particular sentencing reform law, and adopting a rigid rule that destroys everything in its path, I will choose the former," she wrote.

O'Connor listed Alaska, Arkansas, Florida, Kansas, Michigan, Minnesota, Oregon and Pennsylvania as states with systems similar to Washington's.

O'Connor and a fellow dissenter, Stephen G. Breyer – who participated in drafting the federal sentencing guidelines before joining the Supreme Court – predicted that the cost to the states of complying with the court's ruling would spell the end of sentencing reform.

"The simple fact is that the design of any fair sentencing system must involve efforts to make practical compromises among competing goals," Breyer wrote. "The majority's reading of the Sixth Amendment makes the effort to find those compromises – already difficult – virtually impossible."

Scalia noted that the court's ruling does not necessarily apply to the federal guidelines, which were not directly at issue in the case. But Breyer wrote that he is "uncertain" how to distinguish Washington state's system from the federal system.

Chief Justice William H. Rehnquist and Justice Anthony M. Kennedy also dissented.

In response to Breyer, Scalia wrote that "our decision cannot turn on whether or to what degree trial by jury impairs the efficiency or fairness of criminal justice."

Scalia suggested that sentencing guidelines are unfair to defendants such as the kidnapper in Washington, Ralph H. Blakely Jr. Blakely pleaded guilty in return for the prosecutor's recommendation of a 53-month sentence, only to have the deal scrapped by a judge.

Increased costs could be mitigated, Scalia said, if prosecutors negotiate plea agreements in which defendants waive their right to jury sentencing.

“The framers would not have thought it too much to demand that, before depriving a man of three more years of his liberty, the State should suffer the modest inconvenience of submitting its accusation to [a jury] rather than a lone employee of the state,” Scalia wrote.

His opinion was joined by Justices John Paul Stevens, Clarence Thomas, Ruth Bader Ginsburg and David H. Souter.

Seattle defense lawyer Jeff Fisher, who represented Blakely, said the decision will strengthen defendants' bargaining power.

“I suppose it will cost [states] some money,” he said. “Obviously, abiding by the Constitution costs money in various ways – but not an extraordinary amount of money.”

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