

**SUPREME COURT OF LOUISIANA**

**99-K-3256**

**STATE OF LOUISIANA**

**versus**

**ROY A. LINDSEY**

**Consolidated with:**

**99-K-3302**

**STATE OF LOUISIANA**

**versus**

**DARRYL K. WEBSTER**

KNOLL, concurring, in part, and dissenting, in part.

I agree with the majority's disposition of State v. Webster. However, with regard to State v. Lindsey, although I agree that Lindsey's criminal conduct requires a significant period of incarceration, I find that the majority's affirmation of this life sentence without benefit of probation or suspension of sentence for this defendant is so disproportionate to the severity of the crime that it renders the sentence constitutionally excessive.

Coker v. Georgia, 433 U.S. 584, 592 (1977) declared that the Eighth Amendment to the United States Constitution<sup>1</sup> bars punishment that does not make a "measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering," or is disproportionate "to the severity of the crime." In line with that jurisprudence, the Supreme Court in Solem v. Helm, 463 U.S. 277 (1983), invalidated a sentence of

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<sup>1</sup> As recognized in Robinson v. California, 370 U.S. 660 (1962), the Eighth Amendment is applicable to criminal punishment meted out in state courts.

incarceration because it was too severe in relation to the crime committed. There, the Court stated:

[W]e hold as a matter of principle that a criminal sentence must be proportionate to the crime for which the defendant has been convicted. Reviewing courts, of course, should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes, as well as to the discretion that trial courts possess in sentencing convicted criminals. But no penalty is per se constitutional. As the court noted in Robinson v. California, 370 U.S. at 667, a single day in prison may be unconstitutional in some circumstances.

Id. at 290.

It has long been the holding of this Court that we have the power to declare a sentence excessive under Article I, § 20 of the Louisiana Constitution even though it falls within the legislatively provided statutory limits. State v. Sepulvado, 367 So. 2d 762, 767 (La. 1979). A life sentence forever closes the door of hope that this defendant might one day learn from his past mistakes and ready himself to become a productive participant in our society. See State v. Stevenson, 99-2824 (La. App. 4 Cir. 3/15/00), 757 So. 2d 872; State v. Burns, 97-1553 (La. App. 4 Cir. 11/10/98), 723 So. 2d 1013, writ denied, 98-3054 (La. 4/1/99), 741 So. 2d 1282.

In the present case, I find that the life sentence on Lindsey is grossly disproportionate to the offense and the offender. Lindsey was thirty-one years of age at the time of sentencing. For a period of almost six years, defendant remained crime-free. Before the commission of this crime of simple robbery on March 29, 1996, Lindsey had three convictions for attempted simple burglary, one in 1990, and two others in February and June 1988, respectively. Even though defendant's most recent conviction, simple robbery, fit the definition of a "crime of violence" as provided in LA. REV. STAT. 14:2(13), his three prior convictions did not involve crimes of

violence; nonetheless, it is clear that none of defendant's crimes involved the use of a weapon. If a defendant receives a life sentence, hope for rehabilitation is removed, and "the taxpayers of the state [will have to] feed, house, and clothe [him] for life." State v. Hayes, 97-1526 (La. App. 1 Cir. 6/25/99), 739 So. 2d 301, 303.

Moreover, I find that disproportionality often results because of the lower courts' application of the rather fluid, subjective elements identified in State v. Dorthey, 623 So. 2d 1276 (La. 1993) and State v. Johnson, 97-1906 (La. 3/4/98), 709 So. 2d 672. Compare, for example, the diametrically opposed results between the trial court and appellate court dispositions in State v. Stevenson, 757 So. 2d at 874, State v. Randall, 98-1763 (La. App. 3 Cir. 6/9/99), 741 So. 2d 852, writ granted, 99-2476 (La. 2/11/00), 754 So. 2d 245, and State v. Burns, 723 So. 2d at 1013.

Based upon the record in this Court, I would vacate Lindsey's sentence and remand this case to the district court to sentence defendant to the longest sentence that is not constitutionally excessive, i.e., to the maximum constitutional sentence. Such action would address the dire need to come to grips with defendant's recidivism and yet follow the dictates of the Constitution.