Supreme Court of Georgia
Jane Hansen, Public Information Officer
244 Washington Street, Suite 572
Atlanta, Georgia 30334
404-651-9385
hansenj@gasupreme.us

SUPREME COURT RULES WILSON'S SENTENCE CRUEL AND UNUSUAL

Atlanta, October 26, 2007 -- The Supreme Court of Georgia today ordered that Genarlow Wilson be released from prison. In a split 4-to-3 decision, the state's highest court has upheld a Monroe County judge's finding that Wilson's 10-year-prison sentence constitutes "cruel and unusual punishment" under the Georgia and U.S. Constitutions.

Wilson was convicted in 2005 of aggravated child molestation for engaging in consensual oral sex with a 15-year-old girl when he was 17. Under the law at the time, the crime was punishable by a mandatory minimum of 10 years in prison with no chance of parole, followed by registration as a sex offender. The law was amended July 1, 2006 making conduct such as Wilson's a misdemeanor punishable by no more than a year in prison and no sex offender registration. But the legislature did not make the law retroactive, and the change did not apply to Wilson.

In today's 48-page opinion, Chief Justice Leah Ward Sears wrote for the majority, noting that the changes in the law "represent a seismic shift in the legislature's view of the gravity of oral sex between two willing teenage participants" and "reflect a decision by the people of this State that the severe felony punishment and sex offender registration imposed on Wilson make no measurable contribution to acceptable goals of punishment."

"Although society has a significant interest in protecting children from premature sexual activity, we must acknowledge that Wilson's crime does not rise to the level of culpability of adults who prey on children and that, for the law to punish Wilson as it would an adult, with the extraordinarily harsh punishment of ten years in prison without the possibility of probation or parole, appears to be grossly disproportionate to his crime," the opinion says. Joining in the majority were Presiding Justice Carol Hunstein, Justice Robert Benham and Justice Hugh Thompson.

Justice George Carley, writing for the dissent, points out that the Georgia legislature "specifically addressed the issue of retroactive application" with a "clear and unambiguous provision," stating that the amendment was not to be applied retroactively. "[T]he General Assembly expressly stated that in no event was the 2006 amendment to affect or abate the status as a crime of any act or omission which occurred prior to its effective date," the dissent says. Wilson's sentence cannot be deemed cruel and unusual "because the General Assembly made the express decision that he cannot benefit from the subsequent legislative determination to reduce the sentence for commission of that crime from felony to misdemeanor status."

The dissent calls today's decision "rare because of its unprecedented disregard for the General Assembly's constitutional authority to make express provision against the giving of retroactive effect to its legislative lessening of the punishment for criminal offenses." Furthermore, "any and all defendants who were ever convicted of aggravated child molestation and sentenced for a felony under circumstances similar to Wilson are, as a matter of law, entitled to be completely discharged from lawful custody even though the General Assembly expressly provided that their status as convicted felons would not be affected by the very statute upon which the majority relies to free them." Joining in the dissent were Justice Harris Hines and Justice Harold Melton.

The majority emphasizes that it is not applying the 2006 amendment retroactively, but rather is factoring it into its determination that Wilson's punishment is cruel and unusual. Citing Fleming v. Zant, the majority notes that under the Eighth Amendment to the U.S. Constitution, a sentence is considered cruel and unusual if it "is grossly out of proportion to the severity of the crime." "Moreover," the majority says, "whether 'a particular punishment is cruel and unusual is not a static concept, but instead changes in recognition of the evolving standards of decency that mark the progress of a maturing society.' Legislative enactments are the clearest and best evidence of a society's evolving standard of decency and of how contemporary society views a particular punishment."

The majority opinion points out that this Court rarely overturns a sentence on cruel and unusual grounds. But twice before, it did so following a legislative change. In Fleming, the Supreme Court ruled that the execution of mentally retarded offenders constituted cruel and unusual punishment, even though when Fleming was first given the death penalty, there was no such prohibition against it. The Georgia legislature did not add that prohibition until later in 1988. Similarly, in Dawson v. State, this Court held that death by electrocution was cruel and unusual following the legislature's amendment that replaced electrocution with lethal injection. "We noted that this amendment constituted a significant change in the law and that it represented a shifting societal consensus on electrocution and constituted clear and objective evidence that our contemporary society condemned this method of punishment," the majority writes.

The dissent argues that Fleming and Dawson do not apply here because in the relevant legislation in those cases, the legislature did not clearly prohibit applying the laws retroactively.

The majority opinion cites differences between the Wilson case and its earlier decision in a similar case, Widner v. State. Widner was 18 when he had consensual oral sex with a 14-year-old, and he too was sentenced to 10 years in prison. In that case, the Supreme Court ruled against Widner, saying his sentence "does not unconstitutionally shock the conscience." However, the majority finds that the 2006 amendment would not have applied to Widner because he does not satisfy the statutory requirement that he be "no more than four years older than the victim."

In its cruel and unusual analysis, the majority compares Wilson's sentence with sentences for other crimes in Georgia, as well as sentences imposed in other states for the same conduct. "A review of other jurisdictions reveals that most states either would not punish Wilson's conduct at all or would, like Georgia now, punish it as a misdemeanor," the majority writes. It found no state with a minimum 10-year prison sentence and no parole.

The majority does find that the Monroe County habeas court erred in re-sentencing Wilson for a misdemeanor crime that didn't exist when the conduct in question occurred. The

proper response is for the habeas court "to set aside Wilson's sentence and to discharge Wilson from custody," the opinion says.

The Supreme Court unanimously holds that Wilson was properly denied bail as he awaited the outcome of the appeal.