

US Supreme Court upholds federal death sentence

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23 June 1999

In the first case to reach the highest US tribunal since the passage in 1994 of the Federal Death Penalty Act, the Supreme Court upheld a death sentence in a federal criminal case despite ample evidence of judicial error in instructing the jury. The decision was by a 5-4 margin, with the five most conservative justices supporting an opinion written by Clarence Thomas.

The 1994 law, passed by a Democratic Congress with the support of the Clinton administration, extended the death penalty to more than 40 federal crimes, the first significant expansion of the death penalty for crimes under federal jurisdiction. Nearly all US death penalty cases fall under state laws, but 21 people have now been sentenced to die under the federal law, including the Oklahoma City bomber, Timothy McVeigh.

The case before the high court, *Jones v. United States*, involved Louis Jones, a retired Army Ranger who kidnapped and murdered a young enlisted woman near Goodfellow Air Force Base in Texas. Attorneys for Jones appealed his death sentence on four grounds, all of them rejected by the Supreme Court majority.

The principal issue was the refusal of the trial judge to instruct the jury during the penalty phase of the trial that if they could not agree on a death sentence, he would impose the only alternative sentence possible under the law, life imprisonment without possibility of parole. The defense sought this instruction because jurors in capital cases have been known to vote for a death sentence out of concern that otherwise the defendant might ultimately be released on parole rather than serve a life term. Aggravating this circumstance was a form given to the jurors which listed their sentencing options as death or "some other lesser sentence," concealing the fact that life without parole was the only "lesser sentence" possible.

The Supreme Court majority denied that the judge's

refusal to issue the instruction was an error or a violation of Jones's constitutional rights, with Thomas arguing, "The Eighth Amendment does not require that the jury be instructed as to the consequences of their failure to agree." He also claimed that the jury was not "affirmatively misled," although the prosecution aggressively opposed the defense request to spell out the two sentencing options.

Thomas went so far as to suggest that concealing the possible alternative sentence was a positive good. "The government has a strong interest in having the jury express the conscience of the community on the ultimate question of life or death," he wrote, and "a charge to the jury of the sort proposed by [Jones] might well have the effect of undermining this strong governmental interest."

In other words, the court majority was declaring that the federal government has a direct interest in encouraging as many death sentences as possible. It is thus not a matter of imposing a sentence appropriate to the specific circumstances of a case, but of a more general, social necessity to identify the state with the power to kill.

Even if the judge's charge to the jury created confusion, the majority opinion continued, Jones "cannot show the confusion necessarily worked to his detriment," and therefore the error was "harmless." This is another unique contribution to jurisprudence from the right-wing Court majority—a "harmless" error which leads to one's execution!

The court majority rejected other arguments of the defense related to the conduct of the federal prosecutors during the penalty phase, in introducing evidence of the victim's youth and the impact of the murder on her family in a way which was not permitted under the 1994 law.

The four dissenting justices cited longstanding precedents that “accurate sentencing information is an indispensable prerequisite to a jury's determination of whether a defendant shall live or die.”

The decision brings closer the first execution by the federal government since 1963. It is unlikely to be Jones, who has several avenue of appeals still open. Several other federal prisoners have exhausted more appeals and would likely face execution sooner.



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