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Supreme Court Strikes Down Calif. Sentencing Law

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Monday, January 22, 2007; 12:54 PM

The Supreme Court struck down a California sentencing law today, ruling that judges cannot impose increased sentences based on aggravating factors that were not determined by a jury.

The 6-3 decision in *Cunningham v. California* effectively requires California to overhaul its Determinate Sentencing Law and could eventually result in shorter prison terms for thousands of state prisoners who may have to be resentenced in accordance with the Supreme Court's ruling.

The court sided with the plaintiff in the case, John Cunningham, a police officer who was convicted by a jury in Contra Costa County, Calif., of sexually abusing his young son. The judge in the case imposed the maximum prison sentence of 16 years based on six aggravating factors.

But Cunningham argued that the judge based the sentence on facts not determined by the jury in violation of his Sixth Amendment right to a jury trial and his Fourteenth Amendment right to due process. He claimed that five of the six aggravating factors should have been excluded from the sentencing decision because the jury had not found them proved beyond a reasonable doubt.

In Cunningham's case, the Supreme Court ruling effectively reduces his prison term by four years. But its impact on other sentences will likely depend on a reexamination of the affected cases, and the number of inmates who stand to benefit is unclear.

Cunningham's lawyer, Peter Gold, told the high court that some sentences would differ by only a year or so and that many people who might otherwise be affected by the ruling may have already served their prison terms.

Cunningham was convicted of continuous sexual abuse of a child under 14. Evidence at trial showed that he began to abuse his son when, at the age of 10, the boy came to live with Cunningham and his girlfriend. The boy claimed that the abuse included being forced to perform oral sex.

Under California's Determinate Sentencing Law, the offense was punishable by one of three prison terms: six years, 12 years or 16 years. But the law obliged the judge to impose the middle sentence unless he found one or more mitigating or aggravating circumstances. These factors were defined as facts established by a "preponderance of the evidence," a standard lower than "beyond a reasonable doubt."



Ultimately, the trial judge found six aggravating factors, including the vulnerability of the victim, Cunningham's violent and vicious conduct, his threats to harm his son unless he recanted and his employment as a police officer. The judge decided that these outweighed the lone mitigating factor: Cunningham's lack of any prior criminal record.

The judge sentenced Cunningham to 16 years, the maximum, in August 2003. The California Court of Appeal affirmed the conviction and sentence in April 2005, and the state Supreme Court denied review, having already held that the Determinate Sentencing Law met the requirements of the Sixth Amendment.

Writing for the majority, Justice Ruth Bader Ginsburg said the Supreme Court decided to reverse the affirmation of Cunningham's maximum sentence "because the four-year elevation based on judicial factfinding denied petitioner his right to a jury trial."

Supporting her opinion were Chief Justice John G. Roberts, Jr. and Justices Antonin Scalia, David H. Souter, John Paul Stevens and Clarence Thomas. Two dissenting opinions were issued. One, written by Justice Anthony M. Kennedy, was supported by Justice Stephen G. Breyer. The other, by Justice Samuel A. Alito, Jr., was joined by Kennedy and Breyer.

"This court has repeatedly held that, under the Sixth Amendment, any fact that exposes a defendant to a greater potential sentence must be found by the jury, not a judge, and established beyond a reasonable doubt, not merely by a preponderance of the evidence," Ginsburg wrote.

"Cunningham's sentencing judge had no discretion to select a sentence within a range of 6 to 16 years," she wrote. "His instruction was to select 12 years, nothing less and nothing more, unless he found facts allowing the imposition of a sentence of 6 or 16 years. Factfinding to elevate a sentence from 12 to 16 years, our decisions make plain, falls within the province of the jury employing a beyond-a-reasonable-doubt standard, not the bailiwick of a judge determining where the preponderance of the evidence lies."

She added, "Because the DSL [Determinate Sentencing Law] authorizes the judge, not the jury, to find the facts permitting an upper term sentence, the system cannot withstand measurement against our Sixth Amendment precedent."

She did not lay out a specific way for California to fix its sentencing law, but noted that other states have modified their systems to retain determinate sentencing by "calling upon the jury -- either at trial or in a separate sentencing proceeding -- to find any fact necessary to the imposition of an elevated sentence."

In a dissenting opinion, Alito wrote that the California sentencing law "is indistinguishable in any constitutionally significant respect" from federal sentencing guidelines that the Supreme Court has previously upheld.

"As dissenting opinions have suggested before, the Constitution ought not to be interpreted to strike down all aspects of sentencing systems that grant judicial discretion with some legislative direction and control," Kennedy wrote in his dissent. "Judges and legislators must have the capacity to develop consistent standards, standards that individual juries empaneled for only a short time cannot elaborate in any permanent way."

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