



RM 237-Recorded 9-10-22
292-Year Prison Sentence Not Cruel and Unusual
United States Court of Appeals for the Ninth Circuit

Announcer 00:00
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Andy 00:17
Recording live from FYP studios, east and west, transmitting across the internet. This is episode 237 of Registry Matters. Good evening, fine sir. How are you?

Larry 00:28
Doing awesome. How are you?

Andy 00:30
I'm very well. You made it another week.

Larry 00:33
Isn't that amazing?

Andy 00:34
That is pretty amazing. Speaking of making it another week, somebody else didn't quite make it another week. Do you have anything to say?

Larry 00:43
Someone who didn't make it another week?

Andy 00:46
Yeah, that would be the queen.

Larry 00:48
Well...

Andy 00:49
Charles is probably upset.

Larry 00:50
She only made it 96 years.

Andy 00:55
But in pre-show, we talked about the reign of leadership, whatever. Like there was a pope that made it how long?

Larry 01:05
28 days?

Andy 01:08
That's not very long. That is not very long at all.

Larry 01:13
Yeah, so we were testing my memory, and nobody googled it. So I think he lasted 28 days. I think he was proclaimed Pope in '78. And I think his name was John Paul, the first. I think he originated from Poland.

Andy 01:31
And are we talking about like in the 1800s? Or is that roughly. Is this somewhere in your tenure of life?

Larry 01:39
We talked about 1978.

Andy 01:41
Oh, that's not that long ago. I was even a hatchling by then.

Larry 01:47
So yeah. So he preceded John Paul the Second, who lasted quite some time.

Andy 01:52
Right. And he's the one that in the modern era, like he was almost like the Queen, for he was there for forever. And he ended up with like, the Popemobile, with a little bubble over his vehicle, I believe, because there was an assassination attempt on him.

Larry 02:08
That is correct. You have a great memory.

Andy 02:12
Well, tell me what we are going to do tonight, Sir.

Larry 02:16
Well, we're going to offer some condolences for someone who was lost in a prison in North Carolina, I think just yesterday. We're going to play some audio video clips from YouTube. And we're going to take a question from one of our long-term listeners. And we've got an analysis to do with that question that's pretty thorough. And we've got a great decision from the Ninth Circuit that illustrates what's wrong with the Anti-terrorism and Effective Death Penalty Act of 1996.

Andy 02:54
Man, all right, well, sounds like we're going to have a great show ahead of us. And before we get going too far on this, I

will say make sure that you go over to the YouTubes and press the like and subscribe and hit the bell to notify, and that'll start spreading the FYP registry matters juice all over the place. And that's definitely what we want to have happen, isn't it?

Larry 03:14

It is indeed. We picked up in the last episode, I think at least 15 or 20 new YouTube subscribers, which is an unusual high number for us.

Andy 03:23

Well, considering that the title of it--I wouldn't say it was like super click baity--but it was definitely like the amazing defeat or whatever I wrote, as far as the title goes--crushing defeat in Pennsylvania.

Larry 03:37

Well, I'm sure that that caused some people to click, but it was a crushing defeat. It really was.

Andy 03:42

I agree. And so that generated a lot of buzz and a lot of traffic. Anyway, I appreciate it. So make sure that you share the podcast and tell everyone you know. I did I'll give you a quick update on this, that maybe I should say to them, but I contacted Securix or whomever is running the tablet stuff in the prison. And I've had minor email conversations back and forth. And I did get a reply. And they said, go over here and do it. So maybe we'll end up in prisons, maybe. That would be pretty big. I think that would be super significant for us to get to the PFR community that is still locked up and get them listening to the podcast.

Larry 04:18

Well, that would be so awesome, because we are looking at the transcription service as far as the distribution arm. The printing will always be doing the transcript for the website. But since the circulation is at such a low level, we may have to reevaluate the viability of that so it'd be great if they could actually listen.

Andy 04:39

Yep, absolutely. Well, so first up on the roster would be that this last-minute news came in and it is "Central prison on lockdown after inmate beat convicted PFR to death." Oh my god. So this is in North Carolina, right?

Larry 05:07

Raleigh.

Andy 05:09

Raleigh. And so he was pretrial. Is that what I read in the article, Larry?

Larry 05:06

You read it correctly. It's very sad that--I'm just going to go ahead and offend the prison audience. You filed every writ that you can, and you assert your constitutional rights. And yet, prisons are the most unforgiving places when it comes to respecting anyone's constitutional rights. This man was pretrial, and he did apparently have previous convictions, for PFR type stuff. But he was put in a prison because the county didn't think they could keep him safe. And he was beaten. His name was--let's not leave him nameless--his name is Ronald Rhodes. And he was beaten by other inmates Friday morning in the recreation yard, according to North Carolina Department of Public Safety. I guess all we can do is what is standardly done is thoughts and prayers for the family. But I'm really, really upset about this.

Andy 06:03

I completely understand. So I mean, is there anything else besides this?

Larry 06:10

We don't really know much other than this, but I found it so sad that of all places, when someone comes into a prison or jail, which is what he was in for was for, for pretrial detention, you should afford them the benefit of the presumption of innocence that our constitution is supposed to afford everybody. And I say that regardless of the offense, regardless of if it's a police officer, regardless of if they do something that we see on camera--there may be a defense that's viable. Therefore, they're presumed innocent.

Andy 06:45

Gotcha. So the one thing in here that I wanted to bring up with you is that Rhodes was being housed in the prison as a "safe keeper," at the request of Wake County and the "safe keeper" is generally an offender who is housed at a state prison before trial, so I'm going to assume he was not afforded bond, and that he is just in a pretrial detention type deal, but they have it worded differently.

Larry 07:09

So yes, I have not seen that term safe keeping. But that would be not unusual if a local lockup doesn't feel like they can keep him safe, based on a high level of community awareness. You can't keep the word-- you can't keep people's stuff secret now, in this modern era that we're living in. Therefore, it's difficult to do anything other than try to move them to a facility where hopefully their offense won't be so easy to discern, but it just didn't work. He was still--

Andy 07:39

Clearly it didn't work. I mean, there is like the chain-gang-hotline. I mean, all you do is like, hey, this person came in,

and their family will go look them up, and they'll tell you who the person is. And then everything goes to like, you're just at the whim of everyone in there to do what they want to do to you.

Larry 07:59

Well, like I say, I'm sad about it.

Andy 08:03

All right. Well, then let's move over to this listener question, which is probably going to consume almost the rest of the podcast. And so we have this question that reads and it's from Moses, as you said. Seriously, Moses 10 tablets guy, remember the 10 Commandments guy?

Larry 08:18

Moses is actually the guy's name.

Andy 08:22

All right. "I have a question about the Full Faith and Credit Clause in the United States Constitution. If this provision means anything, how can a person be subjected to separate punitive restrictions based on which state they reside? If one migrates to a new state, they are subjected to the laws of that state, which doesn't seem right. Shouldn't each state recognize once one's punishment is completed in another location. This would be similar to one state recognized in other states driver's license or marriage license. It seems to me that if state A imposes a 10-year period of registration, all other states should be bound by that under the Full Faith and Credit Clause. I've been listening to you two babble for years now, and I'm confident you will have some way to justify this as being constitutional." Alright, so I like this question a lot, including the snark. And would you be so kind, sir, and explain to me what the full faith and credit clause is?

Larry 09:22

Well, the Full Faith and Credit Clause? I'll just read it: " Full Faith and Credit shall be given in each state, to the public acts, records, and judicial proceedings of every other state. And the Congress may, by General Laws, prescribe the manner in which such acts records and proceedings shall be proved and the effect thereof." That's in Article Four, Section One of the United States Constitution.

Andy 09:52

So Article Four, Section One of the United States Constitution. And why is that clause there? What does it do? What do we do man?

Larry 10:00

Well, I decided to do that research, and I went to a reputable source called the Heritage Foundation. Okay, the Heritage Foundation would never mislead us.

Andy 10:22

No.

Larry 10:24

And they say "an essential purpose of the Full Faith and Credit Clause is to assure that the courts of one state will honor the judgments of the courts of another state, without the need to retry the whole cause of action. It was an essential mechanism for creating a union out of multiple sovereigns." And again, that's available at the Heritage Foundation's guide to the Constitution.

Andy 10:41

All right. So now we'll move on to the issue of registration of offenders and how this clause might be applied. Does this person theory have any merit? Is one state changing another state's sentence?

Larry 10:57

Possibly, but it's crucial to understand that many who were registered, engaged in underlying conduct prior to the existence of registration. And by the very nature of that situation, it would be clear that the sentencing court did not order a person to register at the time the person's sentence was imposed, and certainly did not specify a period of registration per se.

Andy 11:18

But we could take a whole big detour and talk about the Kennedy-Mendoza. And it's a civil regulatory scheme, therefore, it's not punishment, blah, blah, blah. We could go down that whole path.

Larry 11:30

We will. We will get there as this progresses.

Andy 11:34

All right. Well, then the courts have upheld the retroactive imposition of offenders' registration as a non-punitive civil regulatory scheme. And I thought you have stated repeatedly that regulatory schemes cannot be, or excuse me, can be changed. They can be changed retroactively.

Larry 11:48

Yes, those truly civil regulatory schemes can't be imposed retroactively without violating the Ex Post Facto Clause when they're remedial in nature. Unfortunately, most registration schemes as they exist throughout the United States today go far beyond what anyone could be objectively considering as non-punitive.

Andy 12:08

And does he have a point in terms of those who committed their offense after the existence of registration?

Larry 12:15

Maybe. Most offenders who engaged in conduct and who have been sentenced since the creation of registration schemes generally were apprised by their sentencing court of the duty to comply with offender registration. But this is still not the same thing as having a particular period of time prescribed in the sentencing order.

Andy 12:36

Have you ever seen a sentence order where the actual registration period was prescribed?

Larry 12:42

Yes, I actually have. I've seen some rare situations where the sentencing order does prescribe a particular period of registration. In those situations, the person might have legitimate legal claim that they were imposed by the court and the original jurisdiction should be final and binding of all states.

Andy 12:57

In those cases, were they exceeding or were they reducing the amount of registration.

Larry 13:03

They were not doing either. They were just putting down on paper how long the person would be required to register. But those were anomalies. Because as we have generation one, generation two, as the registries have been enhanced and extended, those practices of putting a particular time in there have long since vanished. But in the early days of registration, when we had much more lenient terms for registration, but shorter terms. I've seen a few that actually included the amount of time that the person would have to register.

Andy 13:39

Have you seen anybody challenge it when they put the registration obligation there in the sentence?

Larry 13:48

To my knowledge, there hasn't been any appellate case law. But yes, I have seen in an instance, where there was a particular time that the person moved for enforcement of the judgment, but they had not left the original state. And the enforcement of the judgment did occur because it was deemed to be a binding contract and a binding order of the court. It was in the plea agreement. It was a binding order of the court. But the only way to find out if this was a credible argument would be to develop a case asserting the Full Faith and Credit Clause.

Andy 14:19

So has there been a challenge like that?

Larry 14:24

Not that I'm aware of, no.

Andy 14:27

Okay. What would you expect such a challenge to be if there was one wanting to be brought?

Larry 14:32

Well, we can be certain that the Attorney General of the State would fight vehemently to extinguish the person's case. They would argue that since the registry is a non-punitive civil regulatory scheme, they can impose their own requirements independent of the state where the underlying conduct occurred. That's, that's just got to be their first line of defense is, you know, this is civil, remedial and non-regulatory. And we can do this, and we don't care what happened in Georgia. This is not Georgia. This is Iowa.

Andy 14:59

I still will really struggle to find, unless we're talking about the super easy states where you're not on a public website, and there's very little quote-unquote disabilities and restraints, how anybody could honestly, with integrity say, that it is not punishment. There are so many things that go with it that can put you immediately in harm's way.

Larry 15:25

Well, they can say that because on the last standing order that's precedential, in that jurisdiction-- if there has been no termination in a jurisdiction that registration is punitive. Like, for instance, in my state, there's been no determination that our registry is punitive. Therefore, you can say it with a straight face because the controlling case law is that it's not punitive.

Andy 15:44

Gotcha. How would they justify their position since that clause, the Full Faith and Credit Clause, seems so clear?

Larry 15:52

Well, they would cite to other examples of civil regulatory requirements that change from state to state. For example, some vehicles are exempt from pollution inspection in sparsely populated states. And that exemption does not transfer to the new state. So that's what they would say they would say: Your Honor, this is just bogus. I mean, clearly, this is a civil regulatory scheme, as far as New Mexico Supreme Court has said, and whatever they may have had in Pennsylvania is irrelevant in our state, because ours is not punitive. And therefore, we can change it just like we would do on any other civil regulatory scheme. You may have been exempt from paying for a driver's license. You're no longer exempt when you come here, or vice versa.

Andy 16:33

But when you do go to another state, you follow that state's registry stuff, don't you?

Larry 16:38

That is correct.

Andy 16:40

Okay, Okay. And so then do you think the legislature would get involved if someone filed one of these cases?

Larry 16:50

I think at some point, that very much could happen, particularly if the argument is gaining traction. More states would amend the registration laws to include a clause that imposes the greater of the duration required in the state of conviction or their state. And in fact, there's some states that already have that clause in their statutory schemes. I came to realize that Iowa has that and so does Utah.

Andy 17:20

And so we talked about, almost like plaintiff shopping, who do you think a good plaintiff for a case like this? Who do you think that person would be? What would their profile be?

Larry 17:31

I think would be an individual who does have a specified period of registration, prescribed in their sentencing order. And then the second-best candidate would be a person who had a defined period of registration spelled out in their plea agreement. That person would be in a stronger position to argue that the agreement should be enforced as a binding contract.

Andy 17:52

And if it was actually in the plea agreement, that person would be in a stronger position to argue that the agreement should be enforced, wouldn't it?

Larry 18:00

I think, I certainly think they are because these have been deemed to be contracts. But the situation is a bit murkier, because the new state would counter by claiming that they cannot be bound by an agreement made by an official another jurisdiction, which is what I mentioned earlier, that where there was a particular time, it was enforced in this jurisdiction, because it was a contract made by a New Mexico official, who was authorized to act on behalf of the State in being the district attorney, or the associate District Attorney. But this would indeed be a very unique and interesting legal challenge if someone were to do this. And Moses has really tantalized me with this question.

Andy 18:37

And while you clear your throat for a minute, so someone in chat says isn't a driver's license a civil regulatory scheme. So if you go to another state, do you get forced to go get a new driver's license?

Larry 18:51

You do at some point, if you've been in that state, long enough, generally like 30 days, you would have to get a new driver's license if you're going to be there beyond a certain point.

Andy 19:01

I recall, and this could have been hearsay that when I was in the military, and I got stationed somewhere, they said that you didn't have to change your driver's license, because you're permanently temporarily there. So you're going to change duty stations in a little while, so why keep making you go change your driver's license? And you just keep your driver's license from your home state through the umpteen 100 years that you're in the military.

Larry 19:25

There may be such an exception for military.

Andy 19:28

All right. Is there anything else that you wanted to cover here? It's an interesting question.

Larry 19:36

It is. I really think that someone may be able to bring such a challenge, and we may be able to get some traction.

Andy 19:43

And Brenda says military special indeed. Yes. Very, very special, like Shortbus special, Brenda.

Larry 19:49

Shortbus special.

Announcer 19:50

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Andy 20:38

Well, then you also put this case in here from the Ninth Circuit Court of Appeals named Atdom Patsalis. Why do you put these-- like I can read in some really complicated words, Larry--, but this one—Atdom Patsalis versus David Shin. And it was just a few days ago that the decision came out. And I remember a case that was named May versus Ryan, which later became May versus Shin. Why do so many people sue Mr. Shin?

Larry 21:09

They still have insufficient capacity as Attorney General of Arizona.

Andy 21:14

What part of Arizona is this case from? We just did the clip from--no we haven't done the clip for Maricopa County yet.

Larry 21:24

Yeah, we kind of got them out of order. I thought we were gonna do that clip first.

Andy 21:26

Then I goofed up. I'm sorry.

Larry 21:31

But yeah, we can do we can do those later. We've got this one from Mojave County, which I think is Kingman, Arizona.

Andy 21:41

So what's the issue here? I've read it thoroughly. And I see no connection as usual to PFR issues. You do realize that FYP's time is valuable? Like I'm on the clock here and you better bring me some juicy stuff, or else I'm shutting you down.

Larry 21:56

I do recognize our time is valuable, but it does have a connection to PFR issues as it relates to the federal Habeas Corpus proceedings, and the Anti-terrorism and Effective Death Penalty Act of 1996. And it's very similar to Steven May's case, which we have discussed on previous episodes.

Andy 22:14

Well, can you summarize it? Be brief, Larry, don't use many words. Use few words. Can you describe what this case is about?

Larry 22:26

Sure. Mr. Patsalis, I think it's the way you pronounce it, sought federal habeas relief, arguing that his 292-year sentence imposed by an Arizona State Court is grossly disproportionate to his crime and constitutes cruel and unusual punishment and violation of the federal and Arizona Constitution. Is that concise enough?

Andy 22:49

I suppose. So he was convicted of how many felonies, Larry? Larry, I want you to say it.

Larry 23:04

25.

Andy 23:05

Twenty-five, mostly residential burglaries committed against multiple victims over a three-month period. He was very active--I'm assuming houses or apartments. And it was noted that these were not his first crimes. The trial court imposed consecutive sentences and consecutive is not concurrent, meaning they got one after the other after the other on all but two of the 25 counts, resulting in an overall sentence of 292 years imprisonment. And can you at least admit that that has to be cruel and unusual punishment, Larry?

Larry 23:35

No, I can't.

Andy 23:38

Alright, so let's give a little bit of some background on the petitioner's case. He committed a series of burglaries over a three-month period when he was 21 years old. He was offered a two alternative plea deals. The trial judge explained to him that the deals and that he faced up to 490 years. Hey, they downgraded from the 490 down to 292 later. That's not a bad deal. He faced up to 490 years imprisonment if he went to trial. He rejected the plea offer, went to trial, and a jury convicted him on 12 counts of burglary in the second degree, 10 counts of burglary in the third degree, theft of a credit card, unlawful means of transportation, and an attempt at unlawful means of transportation. Does this mean like carjacking?

Larry 24:23

Probably not. I wasn't able to get a lot of detail from the Arizona court decision, but he probably just stole their vehicles after he broke into them.

Andy 24:32

And so then the jury also found two or more aggravating circumstances on all but two counts of convictions. I know you people will say he should have taken the plea.

Larry 24:43

Well, I might, or I might not. It was again not clear what they had offered him. It would depend on what they offered him.

Andy 25:05

They could have offered him concurrent.

Larry 25:07

Well, if they offered him something that would allow him to be free again. He will now die in prison, barring any changes in Arizona law. But had they offered him anything that would give him some reasonable assurance of freedom, then I would look at the strength of the case as it existed. And he had confessed. That was an Arizona State Court decision that I reviewed. So being that he had confessed, I would have encouraged him to take a plea that would have gotten him out of prison. Yes, but not knowing what the plea offer was, I don't know if I can say that.

Andy 25:30

At sentencing, the trial judge found that Patsalis was a category three, repetitive offender because he had two prior felony convictions. The judge also considered Patsalis' lack of empathy for his victims, that his victims included elderly, retired people, that his crimes were premeditated, that he was not under the influence during the commission of any of his crimes, and that his prior incarcerations had not deterred him from continuing to engage in criminal conduct. Why did they merge the counts, though? That's really troubling.

Larry 26:05

Well, because there was no plea agreement, which left sentencing pretty much wide open. The judge rejected Patsalis' argument that the 25 offenses were part of a continuous spree because he committed them over three months, which is what he was arguing. Exactly what you're saying, they should merge. It was one criminal episode. But the judge said that that gave him plenty of time to reflect upon his conduct, and not to continue. So therefore, they didn't merge because the law in Arizona is structured the way it was, and he had nothing to protect him at sentencing because he went to trial. Remember, he did what you encourage everybody to do.

Andy 26:41

And before we go much further, I would like to get an explanation on why this case went to federal court. If he wasn't, if he wasn't robbing houses in multiple states, which I still think wouldn't be federal, how does he end up that Arizona bumped this up and had him tried in a federal court.

Larry 27:03

Well, it ends up there because of the US Constitution. There's a procedure after the states, after everything's been exhausted in the state that you can argue in federal court that your US constitutional rights were violated. And the federal courts can overturn a state court conviction using habeas corpus as the mechanism or vehicle.

Andy 27:24

And so in other countries, Larry, they have almost like caps on the number of years. You could go almost like--I don't want to use super gross terms—but there was a guy like in the early 90s, that he went and did a massive killing spree in maybe Sweden, Switzerland, Finland, somewhere up that way. And his maximum sentence was like 21 years, and he killed like 50 or 60 people. And I know that he did not get out of prison because they kept extending it. But the initial sentence was that he could only receive like a max. Apparently, the United States does not have any sort of maximum.

Larry 28:01

Well, some states do, but again, this is bright red Arizona.

Andy 28:09

And I read that when he went to trial, and this means that he would have had a right to have his conviction reviewed by a state appellate court?

Larry 28:16

That is correct. But the Arizona court of appeals rejected his constitutional claims. They concluded that extremely lengthy finish should be assessed based on each individual conviction and sentence, not a cumulative effect of two consecutive sentences. As a result, they found that none of Patsalis' individual sentences were disproportionate.

Andy 28:40

So if we did 25 divided by 292, he got, what 15ish years for each one. So that's not, on their own, an unreasonable amount of time for each one. But then they said they would only evaluate this--15 years, no big deal. Let's look at the next one--15 years. And then they just go down the line, and 25 times they say 15 years, no big deal. Did he appeal that decision to the Arizona Supreme Court?

Larry 29:08

He did, and they denied review.

Andy 29:11

Oh, my God. So then he sought to have habeas relief under 28 US Code Statute 2254. Did I read that right?

Larry 29:20

Section 2254. But that's great.

Andy 29:22

I'll get it right eventually. I remember you have talked about AEDPA, which is the anti-something terrorism and Protection Act or something execution. And what does it do again, AEDPA?

Larry 29:33
Anti-terrorism and Effective Death Penalty Act?

Andy 29:37
Okay. And so we've talked about AEDPA in the past, and you've indicated that the petitioner must exhaust all state court remedies before going into federal court. Does the Arizona Court of Appeals decision meet the definition of exhaustion?

Larry 29:52
Yes, because the State Supreme Court did not review.

Andy 29:56
And so he filed the 2254. And what is that? Can you explain?

Larry 30:02
Yes. It's the section of the federal law that governs Habeas Corpus proceedings filed by those challenging some aspect of their conviction on a federal constitutional ground, and they're challenging a state conviction. So that that's the section of federal law they use.

Andy 30:18
I see. And so you said the reasons we are covering this is because of AEDPA. Can you briefly explain what that does and what it is and all that?

Larry 30:27
Sure, the anti-terrorism and effective death penalty act of 1996 was passed by Congress, to deter terrorism, provide justice for victims, provide for an effective death penalty, and for other purposes. To accomplish this goal, some of AEDPA provisions include increasing penalties for crimes involving explosives or terrorism and providing restitution for victims of terrorism and setting new legal procedures for capital cases. That's one part of AEDPA.

Andy 31:00
And there was a provision in the AEDPA that severely restricts federal judges in terms of their authority to overturn state court convictions. Can you briefly explain that?

Larry 31:11
Yes, and I borrowed this from Cornell University Law. The ad habeas provision is codified as 22. US Code. Section 2254. It includes a statute of limitations for habeas corpus claims, and restrictions on a habeas petition's ability to file a second habeas petition, and section 2254 D narrowed the grounds on which successful habeas claims can be made, while allowing claims only to succeed when the state court decisions--listen carefully--One, was contrary to or involved an unreasonable application of clearly established federal

law as determined by the Supreme Court of the United States; or Two, was based on an unreasonable termination of the facts in light of the evidence presented in the state court proceeding. So it's pretty narrow. You've got to be able to cite to a US Supreme Court precedent.

Andy 32:08
Alright, so this is making a little bit more sense. His primary argument to the habeas judge was that there should have been no deference to the Arizona Court of Appeals. Did I get that right?

Larry 32:18
You did. He argued that AEDPA deferential standard of review does not apply to the Arizona Court of Appeals' decision because that court did not consider the cumulative impact of his sentence. He argued that he was entitled to a de novo, which means a new review of this claim without any deference.

Andy 32:38
And the district court disagreed and afforded AEDPA deference to the Arizona court and concluded that Patsalis is not entitled to relief. What did the Ninth Circuit decide?

Larry 32:50
They agreed and affirmed the District Court.

Andy 32:54
All right, well, then let's get more into his AEDPA deference. Without that nuance in the '98 AEDPA, the Federal habeas court could have granted him some relief?

Larry 33:06
That is correct. But now they have this tough standard. And according to the Ninth Circuit, and I'm going to read from what they said: "a decision is not objectively unreasonable, just because it is incorrect, or even clearly erroneous." And they cited some cases that support that. And that is, then they go on to say that "even a strong case for relief does not mean a state courts contrary conclusion was unreasonable." And then they cited Harrington versus Richter from 2011. So sorry, I hope you guys heard what, even if it's incorrect or clearly erroneous, that's not enough.

Andy 33:43
But don't only want the states to be able to control their own court systems anyway. They're the sovereign, blah, blah, blah. So they can't--you don't just want the federal government to go in and overrule everything.

Larry 33:55
That is correct. That's what the Conservatives used as an argument for this particular section, where they did the habeas insertion into the AEDPA 96. They argued that these

lifetime-appointed judges who are accountable to no one, come in and just steamroll the state courts, with the vast power of the federal government, letting vicious criminals go free on the flimsiest of grounds, and we needed to have finality with the state courts, unless there was some astronomically absurd thing that went wrong, and it's just almost impossible to thread the needle through the AEDPA.

Andy 34:35

But doesn't 292 say something about something completely egregious.

Larry 34:42

Ah, no, that's what you suggest.

Andy 34:45

I see. All right. Well, and I read through this Arizona court of appeals did not specifically rule on the constitutionality of the 292 years, which he argued was cumulatively cruel and unusual. It is certainly unusual, Larry.

Larry 35:00

It is. He did indeed argue that he presented an Eighth amendment claim and a state constitution claim to the Arizona courts asserting that the cumulative impact of incidences was cruel and unusual because they violated the prohibition against sentences that are disproportionate to the crime committed. But no dice. Cruel and unusual is a tough standard to meet. If putting you in the electric chair is not cruel--it's hard to imagine anything being cruel and unusual. But I thought about this before we started recording. Now, according to the Scalia doctrine, and he says that you should look at the death penalty, for example, was widely used in colonial times, therefore, no one would have been thinking when they drafted the Constitution, that there'd been a prohibition against states having death penalty. He said that. We played it multiple times. Okay, well, then, by the same token, in Colonial times, no one ever got sent us to any really significant long period of time because, as Scalia pointed out, they got executed. If they did a serious crime, they got executed. So therefore, haven't they done kind of a flip flop by saying that, because if you're supposed to look at what happened to colonial times, no one would have gotten a 292-year sentence in Colonial times. So therefore, if you judge what that clause may have meant based on how it would have been understood, at that time, that would have been so absurd. It just would have been unheard of. So but basically, they don't see it that way. They do an about face when it comes to it.

Andy 36:33

I mean, since you were alive almost back then, in my brain back then there was not a whole prison complex with hundreds of employees, and all that. So it was almost like, if

you're going to get a fairly short sentence for something--you stole some horses--then you're going to get some amount of time, and you're going to be a burden on someone to for them to take care of you. And then they're going to let you go and possibly say get out of my town and don't ever come back. But now we have this whole, whole complex, the prison industrial complex that locks you up indefinitely, essentially.

Larry 37:12

That is correct. They just executed you back in those times, though.

Andy 37:15

Right, Right. If you did something that extreme, they would, they would just like, we're not going to deal with you anymore. So we're gonna get rid of you.

Larry 37:20

Well, they execute they executed for ultimate buyer client crimes back in those days.

Andy 37:26

And then the court also stated the Arizona court of appeals addressed Patsalis' constitutional claims in a subsection of its decision titled "Cruel and Unusual Punishment." It discussed Supreme Court precedent addressing sentence proportionality and recognize that Patsalis challenged the cumulative impact of his sentences. But the Arizona Court of Appeals declined to assess the proportionality of Patsalis' sentence on a cumulative basis because of Arizona's prohibition against considering the imposition of consecutive sentences in a proportionality inquiry. Did the state consider his arguments, or did they not?

Larry 38:06

Well, it was a difficult read to follow in that regard. But according to the Ninth Circuit, the Arizona court of appeals did by applying the rule against considering the imposition of consecutive sentences into force proportionality inquiry. And considering the facts relevant to sentencing include the number of victims and his criminal history. They rejected his constitutional claims, both state and federal, challenging his sentencing as grossly disproportionate to the crimes.

Andy 38:32

Let's get out of this case, if you are finished. So it's important to read on page 17 of the opinion that states "there is no clearly established law from the Supreme Court on whether Eighth Amendment sentence proportionality must be analyzed on a cumulative or individual basis when a defendant is sentenced on multiple offenses." And then they went on to say, "where the Supreme Court has not addressed an issue in its holding a state court adjudication of the issue not addressed by the Supreme Court cannot be

contrary to or an unreasonable application of clearly established federal law.” So in a nutshell, since the US Supreme Court has not ruled on the issue of cumulative or individual basis, it cannot be a violation of clearly established law. Did I get that right?

Larry 39:18

You got it absolutely right. They said, since there has been nothing from the High Court on this, that it can't be contrary. Now you have to admit that's actually somewhat rational. If the law says that you that they can't grant relief, unless it's contrary to US Supreme Court decision, and precedent, and there is none, it can't be contrast to something that doesn't exist, can it?

Andy 39:39

No, but we talked about something recently, where there wasn't precedent. And it's like, well, if there's no precedent, how do you use precedent? How do you get precedent if there's no precedent? Well, I don't remember what it was. It was a couple three months ago or something like that. It was like it would be an impossible standard to meet to get some kind of precedent, because there's no precedent

Larry 40:00

Well, this case will need to go to the Supreme Court.

Andy 40:03

I see. So what's the solution, do you think?

Larry 40:06

Well, the solution would be to change the AEDPA, or the appointment of more activist judges?

Andy 40:11

Oh, Jesus, we can't do that, Larry. I know you love it when I ask you this. Who appointed the three judges on the panel in that decision in the Ninth Circuit? I noticed that Judge Christian dissented and would have provided relief. Did you read her opinion? And who is she?

Larry 40:33

I did not read her opinion. I skimmed it, but she was one of the three on the panel. And she would have given him relief. But she was appointed by that old liberal named Obama. But Judge Silver was appointed as a district judge by President Ford. And he was elevated to the Court of Appeals by President George H.W. Bush. And the other appointee, Daniel Force, was appointed by President Trump. So the two who voted to sustain the district judge and say the 292 years is okay and that our hands are tied by AEDPA, were appointed by Team Red.

Andy 41:17

And you hate when I asked you about Team Red versus Team Blue. But here you are bringing it up. You always have this agenda, Larry to point out the Team Red is not in our favor.

Larry 41:31

I've only pointing out the facts. Now, it's not always a fact. But in this particular case, it is the fact that had there been one more like Judge Christian, we might have had a different outcome.

Andy 41:47

All righty, then. Anything else before we backtrack to what I missed up in the in the order?

Larry 41:54

No, I think this was the correlation was with Steven May who has 75 years. And the Ninth Circuit felt it reflects poorly on American judicial system, that he would likely die in prison? Well, 75 years is somewhat less than 292. So I wonder, I want people to know that it's not just PFRs who get lengthy sentences. I know that you focus on that. But there are a lot of people who get very lengthy sentences, including three strikes laws, and included in consecutive sentencing that is imposed around the country, and particularly in the more conservative states. You would not see anyone sentenced to 292 years in Vermont. It just wouldn't happen. They don't think that way in Vermont. It would never occur to them to put somebody in prison for 300 years.

Andy 42:46

But riddle me this--we were talking about the Queen when we first started out--she would have access to the best medical care on the planet. They have millions and millions and millions of dollars to pay for this. And it's probably just provided for by the royalty there. But a person in prison, obviously doesn't have access to any of that stuff. How do they give you 292, which was downgraded from 490? There's no way that a 25-year-old--he might live to in his 70s, possibly 80s in prison. So like just giving the person 100 years would be a death sentence. What's the rationale of the time they're giving you 292?

Larry 43:31

Well, the district judge said, the trial judge said that he was trying to send a message to the community. But a message could have been far fully effective, with far less than 292 years. You got a 21-year-old. We all know that 21-year-olds generally aged out of their propensity to commit criminal acts, particularly economically driven crimes like this. And I think it's just distasteful. But Arizona is a very tough state. And that's what happens. And I am suggesting that--if I've

got it right, that it's King--but you probably ought to stay out of that jurisdiction from the looks of this.

Andy 44:13

All right. Well, then I'm going to set this up. We have four video clips, two little segment A and segment B. Set this up. What's the first section going to be about?

Larry 44:27

What we're gonna be talking about the Maricopa County, Arizona District Attorney State's Attorney, County Attorney, whatever they call it, but the prosecuting attorney for that jurisdiction. The election is coming up, of course, in less than two months. And I would like to show the type of things that are said in advance of elections, and let you the audience decide if these are over the top and this is the current office holder and the challenger. Each one of them are answering the same question, and how they choose to communicate with the public. So, clip one would be from the person who would like to assume the office in Maricopa County and her name is Julie Cunnigle.

Andy 45:16

I hope all my buttons work.

Interviewer 45:21

What is the clearest difference between you and your opponent when it comes to how you would run the county attorney's office?

Julie Gunnigle 45:27

Sure. The first choice is on the ballot. Now that Roe v Wade has fallen, and that Arizonans are now subjected to a rule from 1864 that creates a mandatory minimum of two years in prison and a max of five for people accessing an abortion and carries with it a little sister misdemeanor rule that criminalizes even the advertisement of contraceptives. It is so important that we have a county attorney who has committed from the outset, to use her discretion to never criminalize people for their reproductive health care decisions. The clearest difference between myself and my opponent is the idea that not now, not ever we will not use the power of the police and prosecutor's office to invade Maricopa County residents and bedrooms and private lives.

Andy 46:15

Okay, what do you have to say about that, first of all?

Larry 46:18

Well, I felt my opinion was that she was clearly communicating that as a prosecutor that she would not enforce the 1864 law that carries a mandatory two years in prison. That seems to be a fair question to ask a person who's going to hold the reins of power. And it wasn't exactly the question she was asked, but how she would pick

and choose because prosecutors can't prosecute every single thing that's unlawful. So they have to have some type of screening process. So she clearly told Maricopa County residents and voters that the 1864 laws would not be enforced in Maricopa County if she were elected. That's my reading of that. And then this is the current officeholder coming up next, Rachel Mitchell, she has an answer to the same question.

Andy 47:12

Okay, here's clip number two.

Unknown Speaker 47:24

Same question for you, Rachel Mitchell. What is the clearest difference between you and Julie Gunnigle?

Rachel Mitchell 47:28

What is on the ballot, Bram, is the safety of our community. I'm a career prosecutor who has worked with the police. Throughout my 30-year career, I've spent 25 years protecting women and children. And my philosophy is that we hold people accountable who commits crimes. My opponent, on the other hand, wants to target police officers, has advocated defunding police officers, and also other things such as getting rid of cash bail. Those things are harmful to the community, and they are going to create danger for our citizens.

Andy 48:04

Did she even answer the question that was asked?

Larry 48:08

Well, the audience is going to have to be the judge. But I felt like that that answer was intended to scare people. She uses that buzzword "defund the police." No one has ever proposed defunding the police--ever, ever, ever. But that is a catchy phrase. And she talked about danger to the community, and then the bail reform. The business side of the bailing bond industry is so adamantly opposed to changing the status quo. And they imply that if you don't let us charge people, money to get out of jail, that you'll be in danger. Because if they're released on any other system, they've not been properly screened. But we screen them so well with our money. It sounded like to me that that was intended to scare the voters of Maricopa County. That's what I heard in that. And that's what I'm trying to point out to people. The voters are barraged with this type of stuff. And they're gonna make a decision, come November, of who they want to run that office in Maricopa County. I doubt that Mitchell will enforce the 1864 law, though she did not renounce it. She had the opportunity to say that she would. I find it doubtful that she will enforce the law, but she didn't really say anything other than if you elect my opponent, you're going to be unsafe. That's what I heard in it.

Andy 49:38

Right totally. Yeah, but so tell me Larry, with your political experience, how come no politician anywhere ever answers the question they're asked?

Larry 49:49

They're trained not to. They're told that you have a message. Their handlers tell them that when you go this interview with whatever the situation may be, that we want you to hammer this. And so, it's just not done. Answering our questions is the silliest thing that you could imagine doing.

Andy 50:09

Okay, well, then let's move over set up the second block of the two clips that we have. One of them's kind of long. The other one's pretty short.

Larry 50:16

Yes, this is our favorite Sheriff actually, from Polk County, Florida. And he is proclaiming how proud he is that he arrested--they call this human trafficking. Now, we used to call it prostitution when someone hires for sexual services, but they were running a human trafficking sting. And they caught an interesting individual. And it almost seems to me like he just relishes in bringing this person's career to an end to his 30 years of law enforcement experience with a Cartersville police department, which is in Georgia. So roll the video.

Grady Judd 51:02

This is Deputy Chief Jason de Prima of the Cartersville Police Department. As I understand it, after talking to his chief, he's been there almost 30 years. He's a graduate of the FBI Academy. A well-respected police officer in town. Did you notice I said in town, but he was out of town. That's right. He was at an American Polygraph Association meeting in Orlando, Florida. Let me let me say this clearly. I don't want you to miss it--driving an unmarked vehicle that was normally assigned to the DEA Task Force, meaning their officer assigned to the task force would have driven this vehicle. But apparently his vehicle was not so good to make the trip. So he's in one of the undercover vehicles when he shows up at our undercover operation in the government vehicle carrying alcoholic beverages. Apparently, some Bud Light for himself and White Claw for our undercover operative.

Andy 52:22

Hey, man, what is White Claw? I've never heard of this.

Larry 52:25

I have not the foggiest notion, but it really makes me have trouble sleeping at night to know that an adult man from Cartersville, Georgia, would go to Polk County, Florida, to

hook up with an adult woman, and they would drink alcoholic beverages to me. To me--

Andy 52:48

There's something wrong with doing that? I'm sorry, I haven't been updated on the social conventions. Is it not allowed anymore?

Larry 52:54

Well, the drinking is certainly lawful, but the paying for sex, he was gonna pay, as the allegation goes. He was hiring this undercover person for a sexual escapade. But now these, this state is known for its wise fiscal management. They're run by people who proclaim to keep government small and lean and efficient. And this is a search of a problem, a solution in search of a problem. This guy was out of town on business. By all accounts, going to your favorite association of polygraphers.

Andy 53:32

I was going to bring that up to.

Larry 53:35

And he was going to have a paid liaison with an adult. And the Polk County sheriff in Florida, is taking great satisfaction as Sheriff Judd does this all the time. He does a press conference about every week, or sometimes more, about some type of sting and some kind of arrest. And he does this, and it was not anything unusual. But folks in Polk County, they obviously support him because he went through election. And it just seems like such a waste of resources. But yeah, we've got we got a second clip with Sheriff Judd.

Andy 54:14

All right. So here's the second one. This one's pretty short.

Sheriff Judd 54:19

And let me tell you the story, as he relates it to us. He is texting with--guess what--our undercover detective. He started this conversation with her on Wednesday night where he was going to show up. But he became spooked. He didn't say why. But on Thursday night, he just couldn't resist the urge to be with our undercover detective who he thought was a high-class prostitute.

Andy 54:58

And so we've had a particular guest on two three times, Kathleen, who covers this, like this is her whole focus in the world is covering the subject. I mean, it's a natural desire to go have relations with people attractive, whatever, like, and so I'm assuming she was a good-looking lady. And so he looks like he's a pretty young lad. But Judd just wants to berate him.

Larry 55:29

Well, he does that. That's his standard operation. When they put on these photos and show. I almost feel bad for the police officer of Cartersville. I mean, I'm not condoning that. He should not have been doing that. But it's—what the oldest profession that there is?

Andy 55:50

Yes, I believe that is the oldest profession is prostitution.

Larry 55:54

So Sheriff Judd has been in office. He was elected in '04. He received 64% of the of vote in a three-way race. He basically ran, might as well say unopposed, in '08. He had a write-in opponent. And he had a write-in opponent in 2012. And so he got 96% of the vote roughly. Then 2016, he ran for a fourth term, and he got 95% of the vote with another write-in candidate. In 2020, they gave up on challenging him, so he ran unopposed. Apparently, the people in Polk County are very happy with the sheriff. And I tell you that the people that we elect are a reflection of us. Sheriff Judd gets on to Canberra and wins 95% of the vote, because that's who the people are in Polk County. They're happy with this.

Andy 56:54

I still wonder, Larry, in the grand scheme of things. Why-- similar to marijuana, why wouldn't we legalize it, regulate it, make sure that it's safe. Then you don't have the underground economy. There's a whole lot of black-market stuff that would go on. There's going to then be drug dealers and the people extorted. If we made it something of a legitimate profession, then seems like that would go away?

Larry 57:20

Well, oddly enough, there is an organization, I can't recall the name, but it was at one of the conferences out in Las Vegas, and I got a shirt, a t shirt from them about sex workers and making their life better. But it's not likely to happen because of a number of things we have such a bias for. There's a morality bias about sex in this country. And a lot of it's based on biblicalists--it supposed to be between man and wife, and for procreation. And beyond that, then it's morphed into human trafficking now. They've so expanded the definition of human trafficking, that everything that used to be unlawful under one section of law has now been transformed to be a more serious crime. It's human trafficking. So now that's what this was a human trafficking operation. And at the beginning of the video, he says we were looking for victims of human trafficking. And in that process, they have to arrest the John's to find out if they're victimizing people.

Andy 58:18

And there was no it was an undercover cop. So I mean, I guess he could have said, Yes, I will pay you for the deed. And so I guess that means there was intent and whatever, they have stuff, but there's technically no victim. It's not like there was a worker on the other side of that. There was never going to be any illegal activities.

Larry 58:37

Well, other than the pay for sex, which he got the price confused, according to Sheriff Judd, he was confused about how much he owed for it, but he did agree. He did agree, and he brought money into it. There was another part I didn't ask you to do, but he apparently, according to Sheriff Judd, the detective from Cartersville had apparently been swindled by someone for \$200. They told him to go get a card and make a picture of it. And I think you can figure out the rest of what what happened. He had to buy the card to show that he had the money and make a picture of it. And you can figure out what went with the card after they got the number?

Andy 59:17

Okay, jeepers man. Well, I think that's all we have. And it's pretty much about the time limit for the show. Anyway, is there anything else to cover here before we get out? I have an announcement that I want to make that I'm going to ask your permission to make the announcement about it first.

Larry 59:35

Well, if you're going to ask in law live with 1000s of people listening, what choice do I have?

Andy 59:40

You? Well, that's I already asked you in pre-show if you would do it, if you would entertain communications with people. There, was that vague enough? That's vague enough. Yes. Okay. And you'll agree?

Larry 59:53

I agree. We're going to try to expand the reach of FYP particularly if our transcription service goes. We've got a new person trying to do the transcript, and he did a great job for the first episode. So we'll see how that goes. But if I can free up some time.

Andy 1:00:11

So what we're going to do is--I will create a new voice channel on the Discord server. And we'll start it out pretty low, Larry, like maybe at the \$5 a month level. So I'm gonna have to figure out how to coordinate with you to make an announcement, but you will go into that voice channel. And if you want to talk to Larry about anything you want to, I'm sure that you'll put limits on whatever you want to. But if you want to shoot the shit with Larry, then you can go in

there and kick it with him and talk about stuff. And maybe it'll be an hour or two hours, depending on how long Larry can put up with you people. All right. Is that a fair way to announce it?

Larry 1:00:52
That sounds great. Perfect.

Andy 1:00:56
Well, then, without anything else to do that is going to conclude this episode of the fine Registry Matters podcast produced by FYP education. Somebody asked, I still don't know what FYP meant. Go look in our archives, whatever you want to do, you can go find where it is. I'm not telling you what it is. And so you find all the show notes over at Registry Matters do co, or FYP education is where you'll find the transcripts produced by our fine new person. And you can leave a voicemail at 747-227-4477. And email

registrymatterscast@gmail.com. And if you want to join in on the new Chatting with Larry, be sure you sign up at the \$5 month level at patreon.com/registry-matters. I think that's all I have for the night, Larry. And I hope that you have a splendid, fantastic rest of your weekend and I will talk to you soon.

Larry 1:01:51
Thanks. I'll see you in a week or so.

Announcer 1:01:53
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