

A Case Commentary on State of Washington v. Allen Eugene Gregory

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ABSTRACT:

Washington D.C. has become the third US state to declare death penalty as unconstitutional. Death sentences have been frowned upon and debated over on the basis of its constitutionality as it fails to create the deterrence for which it was legally established. Justice Fairhurst, the Chief Justice of Washington Supreme Court in the case of State of Washington v. Allen Eugene Gregory, has declared death sentences to be unconstitutional on grounds of it being imposed in an arbitrary and racially biased manner, reducing all death sentences on aggravated first degree murders to life imprisonment. The paper aims to comment upon the aforesaid case, canvassing the historical perspective on death sentences in US in general and Washington in particular, the facts pertaining to the case, the issues raised relating to the constitutionality of death sentences in Washington, the proportionality review and its severability and revisiting of Gregory's guilt phase arguments. Subsequently, the judgement pronounces death penalty to be in contravention of Article 1, Section 14 of the State Constitution which deals with excessive bails, fines and cruelty in punishments, proportionality review has been declared to be a constitutional mandate and cannot be severed and the law of the case doctrine bars review on revisiting Gregory's arguments. Further, the authors have analysed the judgement to opine that though the imposition was arbitrary and racially biased, but striking down death penalty will definitely reduce the deterring factor attached with penalties for grave offences like murder. Additionally, the evidentiary value and reliability of statistical reports had also made this case a turning point in life of judicial history, as the defendant has relied on Beckett & Evans analysis to substantiate his arguments. Finally, the paper juxtaposes the implications this judgement is likely to have after its pronouncement on the capital state of USA.

I. INTRODUCTION

Death sentence has become a way of exacting vengeance not from the transgressor but from one's humanitarianism. The concept of retribution and deterrence through death sentences has been abhorred upon the world over and US is no exception. The United States is the only Western country currently which is applying the death penalty¹. It is one of 54 nations worldwide using it, and had been the first to develop lethal injection as a method of capital punishment, which has since been adopted by five other nations as a part of their execution system. Washington now becomes the third state to declare death penalty to be unconstitutional.

*State of Washington v. Allen E. Gregory*² has been one such Supreme Court decision which has declared death sentences to be unconstitutional on grounds of arbitrariness and racial discrimination in the process of its imposition and reduce them to life imprisonment for aggravated first degree murders. The contemporary and novel issues considered in this judgement have been bones of contention which delve deeper into balancing the

¹ Leigh B. Bienen, *Murder and Its Consequences: Essays on Capital Punishment in America*, NORTHWESTERN UNIVERSITY PRESS 143 (2 ed., 2010).

² *State of Washington v. Allen E. Gregory*, No.88086-7 (2018)

regime of law with humanity. The authors of this paper aim to analyse the case and comment on its legal implications.

II. HISTORICAL BACKGROUND

Capital punishment is a legal penalty in the United States of America, currently is being used by 30 states, the federal government, and the military officers³. Its existence can be traced back to the beginning of the American colonies. The Philippines has since then abolished capital punishment, and Guatemala has done it so for civil transgressions, leaving the US one of four nations to use this methodology, along with China, Thailand and Vietnam.

There were no executions in the United States of America between 1967 and 1977. In 1972, the U.S. Supreme Court struck down the capital punishment statutes in the case of *Furman v. Georgia*⁴ and all death sentences pending were reduced to life imprisonment⁵.

Subsequently, majority of states have passed new death penalty statutes, and court affirmed the legality of capital punishment in the year 1976 in the case of *Gregg v. Georgia*⁶. Since then, more than 7,800 offenders have been penalised with death sentence⁷; of these, more than 1,400 have been executed *in toto*. A total of 161 offenders were sentenced to death in the contemporary world were absolved of their charges. As of April, 2018, 2,743 have been still on death row.

III. FACTS

In 1996, Allen Eugene Gregory, hereinafter called Gregory, was charged with the offences of rape, murder and robbery. One G.H. was attacked in her kitchen, the evidence suggested that before her murder, she was raped and was brutally injured by multiple sharp force bruises and a number of articles like diamond earrings, jewellery and cash were missing from her house, for which Gregory was charged. In 1998, Gregory was separately tried for rape based on R.S.'s allegations, on which the police obtained a search warrant for his vehicle, from which a knife was located, very consistent with the weapon with which G.H. was killed. After which, Gregory was convicted of aggravated first degree murder along with first degree rape depending on R.S.'s allegations.

³ National Conference of State Legislatures, *States and capital punishment*, available at <http://www.ncsl.org/research/civil-and-criminal-justice/death-penalty.aspx>, last assessed on Jan.11 at 16:00 hrs.

⁴ *Furman v. Georgia*, 408 U.S. 238 (1972).

⁵ *Bienen*, *supra* note 1.

⁶ *Gregg v. Georgia*, 428 U.S. 153 (1976).

⁷ Death Penalty Information Center, *Death Sentences in the United States From 1977 By State and By*, available at <https://deathpenaltyinfo.org/death-sentences-united-states-1977-present>, last accessed on Jan 10 at 18:00 hrs.

In 2001, jury convicted Gregory of aggravated first degree murder, which also presided over his penalty phase and sentenced him to death on account of lesser mitigating circumstances to merit leniency. On appeal, the court consolidated the direct review with the appeal filed for separate rape conviction. The court reversed the rape conviction and death penalty but affirmed the accused of aggravated first degree murder. The death sentence was reversed on two grounds: (a) prosecutor's misconduct during the penalty phase of his murder trial and (b) the rape conviction was relied upon in penalty phase. The court remanded the trial court which empanelled a new jury upholding the same view to which Gregory appealed. The court has now consolidated the statutory mandate of death review with Gregory's appeal. Subsequent to remand, the state conducted the rape trial, in which R.S's allegation were proved fallacious. Hence, rape conviction charges were dismissed with prejudice by the trial court as there was no reasonable probability of charging the defendant with the same.

IV. ISSUES

1. Whether the imposition of death penalty in Washington violates Article 1, Section 14 of the State Constitution?
2. Whether the statutory mandate of proportionality review on death sentences attenuates the constitutional imperfections of death penalty and can be severed?
3. Whether there exist sufficient grounds for which the court should revisit arguments pertaining to guilt phase of Gregory's trial?

V. JUDGEMENT

State of Washington v. Allen Eugene Gregory has been a landmark judgement, which unanimously declared death penalty as unconstitutional as was held in *State v. Baker*⁸, *State v. Green*⁹ and *State v. Frampton*¹⁰. These judgements did not declare death penalty as unconstitutional per se but merely invalid on grounds that it has been imposed in an arbitrary and racially biased manner. Gregory has become the epitome of progression towards addressing racial dis-proportionality as the capital punishment has been unequally applied which does not serve the punitive goal and hence violates Article 1, Section 14 of the State Constitution which states that: *Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted*¹¹. With respect to issue 1, Gregory challenged the sentence to death penalty on grounds of excessive and disproportionate penalty to that of similar cases and randomness and arbitrariness in the imposition of death sentence which is impermissible based on race and county of conviction. The judgement further emphasised upon two major

⁸ *State v. Baker*, 81 Wn.2d 281,501 P.2d 284 (1972).

⁹ *State v. Green*, 91 Wn.2d 431, 588 P.2d 1370 (1979).

¹⁰ *State v. Frampton*, 95 Wn.2d 469, 627 P.2d 922 (1981).

¹¹ WA. CONST. art. I, § 14.

judgements, *State v. Davis*¹² and *State v. Cross*¹³, the former dealt with the capital case jurisprudence on proportionality review, considering facts like, sufficiency of the judgement handed down by the presiding judge for delivering that special sentence, penalty imposed in similar cases, passion or prejudice in bringing about this judgement, intellectual disabilities of the defendant, while the latter with the factors relevant to what degree statistical evidence could be relied upon. Gregory also took account of the Beckett and Heather Evans report which concluded count by county variations in decision to seek and impose death penalty. With regards to standard of review, death penalty differs qualitatively from all punishments and requires high level of reliability and scrutiny. The court also took cognizance of the judgement in *State v. Simpson*¹⁴, which held that courts have power to interpret the state constitution which awards more protection in terms of individual rights as compared to parallel provisions of US Constitution. Further, the court affirmed that the imposition of death penalty in an arbitrary and racially biased manner lacking fundamental fairness and violating Article 1, Section 14 of the State Constitution with the aid of the judgement handed down in *State v. Bartholomew*¹⁵. The Beckett analysis provided with more refined, accurate and reliable statistical data from December 1981 to May, 2014 that Black defendants were more likely to result in a death sentence as non-blacks after the impact of other variables included have been taken into account. The court also approved of the fact that death penalty has failed to serve the legitimate punitive goals, mainly retribution and deterrence, *State v. Kwan Fai Mah*¹⁶ described the capital punishment machinery of the state as purposeless and needless imposition of pain and sufferance. With regards to the second issue, the court held that proportionality review fails to alleviate the constitutional defects in death penalty laws but it cannot be severed, the review is a subjective judgement as to whether death penalty fairly represents the values inherent in Washington's sentencing scheme for aggravated murders and being a constitutional mandate cannot be severed as they are so functionally and intimately connected that one cannot be passed without the other. With regards to the third issue, the court delivered that the review of arguments pertaining to guilt phase of Gregory trial is precluded. Gregory's arguments concerning admissibility of evidence used at trial were declined as Gregory could not show grounds for overruling of precedent. The review was barred by the law of case doctrine as same legal issue cannot be revisited on a subsequent appeal, Gregory also not raised issues either prior or during the first appeal and no new evidence could merit the overruling. The review was also not warranted under RAP 2.5 (c) (2) as he failed to show that there was an intervening change of law even with the aid of *State v. Figeroa Martines*¹⁷, *State v.*

¹² *State v. Davis*, 175 Wn.2d 287, 348,290 P.3d 43 (2012).

¹³ *State v. Cross*, 156 Wn.2d 580, 630, 132 P.3d 80 (2006).

¹⁴ *State v. Simpson*, 95 Wn.2d 170, 111, 622 P.2d 1199 (1980).

¹⁵ *State v. Bartholomew*, 101 Wn.2d 631, 639, 683 P.2d 1079 (1984).

¹⁶ *State v. Kwan Fai Mah*, 105 Wn.2d 692, 755 n.124, 718 P.2d 407 (1986).

¹⁷ *State v. Figeroa Martines*, 184 Wn.2d 83, 93,355 P.3d 1111 (2015).

*Garcia*¹⁸, *State v. Winsterstein*¹⁹ and *Missuori v. McNeely*²⁰ and that the erroneous decision if any could cause corresponding injustice. With the same, court reconsidered the law laid down in *State v. Cheatam*²¹ which upheld the constitutionality of comparative DNA Tests. A concurring judgement was also delivered by Justice Johnson which affirmed that there were no differences between Article 1 Section 14 of the State Constitution and Eighth Amendment of federal Constitution and affirmed *State v. Davis* and *State v. Cross*, a view on proportionality review was also delivered that the comparability component will be case specific but the delay inherent in death sentences diminishes the punitive purposes. Thereafter, in light of the aforementioned, all death sentences were to be replaced by life imprisonment for first degree murders.

VI. ANALYSIS

Death penalty has been struck down three times in capital state United States, Washington now has become the third country to declare capital sentencing as unconstitutional on grounds of racial bias and arbitrary procedures. The factors which contributed towards declaring death penalty as arbitrary were based upon the statistical report of Beckett, which opened new horizons of how statistical data has become a reliable source in eyes of law, the case characteristics which shaped the aggravating and mitigating factors towards the defendant and other extra legal and extra social factors impact the imposition of death penalty in the capital state. With a number of regression techniques, the report could successfully conclude that black defendants were more probable of getting a death sentence as compared to non whites. The application of statistics in such scenario has proved to be much efficacious.

This will definitely change the way judges have been looking at the credibility of such reports in courts and its application in socio-legal scenarios. Retribution and deterrence being the reasons for imposition of such death penalty have considerably been diminished. However, imposition of the penalty in arbitrary and racially discriminatory manner without regards to the impact it could have in reducing the 'detering factor' further is still reproachable.

VII. IMPLICATIONS

Capital punishment has been the debate for The United States of America as early as the colonial period. As of 2017, it remains to be a legal penalty in 31 states, the federal government, and military criminal justice systems. Gallup, Inc. monitors support for the death penalty in the United States since the year 1937 by asking a random questionnaire to the entire nation that whether they are supporting death penalty for murder convicts?

¹⁸ *State v. Garcia- Salgado*, 170 Wn.2d 176, 240 P.3d 153 (2010).

¹⁹ *State v. Winsterstein*, 167 Wn.2d 620, 220 P.3d 1226 (2009).

²⁰ *Missuori v. McNeely*, 569 U.S. 141(2013).

²¹ *State v. Cheatam*, 150 Wn.2d 626, 81 P.3d 830 (2003).

Opposition to the death penalty peaked in 1966, with over 47% of American population opposing it, by comparison, 42% of the population supported the death penalty and 11% had "no opinion" on such matters. Death penalty increased in popularity throughout the 1970s and 1980s, when crime rate went up and politicians campaigned to fighting crime and drugs; in the year 1994, the opposition rate was less than over 20%, less than in any other year. Since then, the crime rate has abated and the anti-death sentence movement had intensified again. In October 2016 poll, 60% of respondents said they were in favour and 37% were opposed. Under Trump's rule, fewer people are known to be receiving such a punishment. This judgement will always be a turning point in Washington's history to manifest how retributive factors in death penalty and procedural arbitrariness strikes at the constitutionality of such death sentences. It is certain that curtailment of death sentence to life imprisonment will lower the deterrent impact in eyes of habitual offenders in US.