

## ***LOCKYER v. ANDRADE (2003)***

In *Lockyer*, the Supreme Court by a 5-4 vote upheld application of a California “three strikes” law against a claim that the law’s application in a case of theft involving small value violated the Eighth Amendment’s prohibition of cruel and unusual punishment. The majority deferred to the legislative judgment regarding appropriate sentences and made clear that only in rare or extreme cases would a sentence be found so disproportionate as to violate the federal Constitution.

On two days in November 1995, Leandro Andrade stole videotapes from California Kmart stores and was caught by security personnel. The value of the tapes taken in the two thefts was \$84.70 and \$68.84. Over the previous 13 years, Andrade had been in trouble with the law numerous times and had been convicted of misdemeanor theft (twice), residential burglary, transportation of marijuana (twice), and escape from prison. A longtime heroin addict, he admitted that he stole the videotapes to get money to support his drug habit. *Id.* at 1169-70.

Andrade was charged with “theft with a prior conviction,” an offense that can be charged either as a misdemeanor or as a felony. The trial court had the option under California law of reducing the conviction to a misdemeanor but declined to do so. Under the three-strikes law, any person convicted of a felony who has previously been convicted of two other felony charges is subject to a prison term of 25 years to life. Under that statute, Andrade received two 25-year-to-life sentences, one for each of the 1995 theft convictions, to be served consecutively. He would not be eligible for parole until he had served 50 years. The California Court of Appeal affirmed the convictions and sentences, and the California Supreme Court denied review. *Id.* at 1171. The federal district court next denied Andrade’s habeas corpus challenge to the sentences, but the Court of Appeals for the Ninth Circuit reversed that judgment and held in Andrade’s favor. 270 F.3d 743 (2001).

Because this case was brought under the federal habeas corpus statute, the district court was required to affirm the sentence unless it was “contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.” 28 U.S.C. § 2254 (d)(1). The Supreme Court reviewed its previous decisions regarding what would be sufficiently disproportionate a sentence to violate the Constitution’s cruel and unusual punishment clause. Although the Court majority held that the Eighth Amendment decisions do permit a ruling that a sentence is grossly disproportionate, it held that the standard for determining whether there is an Eighth Amendment violation had not been established clearly or consistently, and that the Ninth Circuit therefore erred when it held that Andrade’s sentence violate clearly established Supreme Court precedent. *Id.* at 1173, 1175.

Writing for the majority, Justice Kennedy concluded that the facts in the present case fell between those in *Solem v. Helm*, 463 U.S. 277 (1983), which found an Eighth Amendment violation, and those in *Rumelle v. Estelle*, 445 U.S. 263 (1980), which reached a contrary conclusion. *Solem*, a later case, had found it error to sentence a person to a life sentence without the possibility of parole following a theft conviction involving a small value of goods. Justice

Kennedy indicated the subsequent Court cases had made clear that *Solem* had not overruled *Rumelle*, that the present case did not involve the unavailability of parole, and that the other crimes the men had been convicted of were not identical. *Id.* at 1173-74. On the other hand, Justice Souter's dissent, joined by Justices Stevens, Ginsburg, and Breyer, asserted that this case was virtually identical to *Solem*. Both cases involved a repeat offender who committed a theft of small value, their criminal records were comparable, neither had been convicted of crimes of violence, and the practical effect of Andrade's sentence, like that explicitly imposed upon Solem, denied any possibility of parole. *Id.* at 1176-77.

In the past quarter century, the rate of incarceration in the United States has increased almost three times as fast as the increase in population, so that now more than 2 million people are incarcerated every day in this country. This result has been brought about by a variety of methods including greatly expanded drug prosecutions, use of mandatory minimum sentences, longer sentences, and three strikes laws. With this decision, the Supreme Court has stated that it will almost never find a sentence authorized by a legislature as punishment for crime to violate the Eighth Amendment to the United States Constitution. Both the majority and the dissent in this case would agree that the overwhelming bulk of decisions regarding sentencing should be made by legislative bodies and that the courts should only rarely find a sentence to be unconstitutionally disproportionate. Clearly the Court's latest decision in this area suggests that a sentence can be set aside under the Eighth Amendment in even rarer instances than suggested by earlier decisions.