LEGAL NEWS

High court weighs if judges must list maturity factors in sentencing juveniles

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DEPOSITPHOTOS

Attorneys in the juvenile sentencing case clashed over whether Maryland's constitutional prohibition on cruel and unusual punishment is broader than the federal Constitution's ban in the Eighth Amendment.

Judges sentencing juveniles convicted of first-degree felony murder must state on the record that they considered the convicts' youth, lack of maturity, impulsiveness and susceptibility to peer pressure before handing down the punishment, a defense attorney argued to Maryland's top court Tuesday.

Such an express statement from the bench is necessary to help ensure that the youthful offenders' sentence for the most serious offense short of premeditated murder does not violate the constitutional prohibition on cruel and unusual punishment, Robert W. Biddle told the Court of Appeals.

But Assistant Maryland Attorney General Jer Welter cited U.S. Supreme Court precedent in saying a detailed judicial pronouncement is not constitutionally required even if the youngster is being sentenced to life in prison without the possibility of parole, a punishment Maryland law bars for juvenile convicts.

Biddle and Welter also battled over Biddle's contention, in court papers, that Maryland's constitutional prohibition on cruel and unusual punishment – found in Article 25 of the Declaration of Rights – is broader than the federal Constitution's ban in the Eighth Amendment.

The Court of Appeals weighed the breadth of the constitutions' prohibitions and judicial sentencing statements as Biddle pressed the appeal of a man who -- when 16 years old in 2009 -- abetted a home invasion in Chesapeake City in which Terri McCoy was shot to death; her father, Terry McCoy, was beaten; and her mother, Geraldine McCoy, was held captive while $500,000 in jewelry was stolen.

Seth D. Jedlicka, now 29, was convicted in Cecil County Circuit Court of first-degree felony murder and sentenced in 2010 to life in prison with all but 60 years suspended. The intermediate Court of Special Appeals upheld the conviction and sentence, despite the lack of an express statement from the sentencing judge.

In Jedlicka's high court appeal, Biddle said both the Supreme Court and the Court of Appeals have held that sentencing judges must consider the juvenile convict's immaturity, impetuosity and failure to appreciate the consequences of his or her actions, lest the punishment be unconstitutionally severe.

Biddle added that the Maryland Constitution goes further than the Eighth Amendment in requiring judges to take the additional step of explaining the role these youth-related factors played in their sentencing decisions.

"There needs to be an explicit on the record review of the unique attributes of youth," said Biddle, of Nathans & Biddle LLP in Baltimore.

A judge's "specific consideration" of these factors prevents a "lack of clarity, lack of transparency" in sentencing juveniles, he added.

But Court of Appeals Judge Steven B. Gould appeared skeptical of Biddle's argument that the Constitution demands an on the record explanation. Gould noted that the sentencing judge heard testimony regarding Jedlicka's lack of maturity and presumably considered that before handing down the sentence.

Welter, in response to Biddle, said the Court of Appeals has consistently held that the Maryland Constitution contains no more protection against cruel and unusual punishment than the federal Constitution as interpreted by the Supreme Court. As a result, judges need not state expressly their consideration of youth-related factors in handing down sentences, Welter said, citing the Supreme Court's decision last April in *Jones v. Mississippi*.

Welter added that any decisions regarding the sentencing of juveniles are best left to the Maryland General Assembly, which last year enacted legislation prohibiting life sentences without the possibility of parole for juvenile offender regardless of the heinousness of their crimes.

"The General Assembly is innovating in this area" of juvenile justice, Welter said. "This is an argument that should be taken to the legislature."

The Court of Appeals is expected to render its decision by Aug. 31 in the case, *Seth D. Jedlicka v. State of Maryland*, No. 30, September Term 2021.

Bridging gaps in communication

JEFF TRUEMAN
Commentary

In some instances, managing a client's expectations may be more difficult than negotiating with the other side. Litigation is stressful and clients respond to stress differently. Most have not been cross-examined before. Feelings of loss and frustration are common – especially in serious injury and death cases.

To help clients cope, lawyers should listen and communicate in ways that earn their client's trust and confidence. Counsel should make every effort to accurately understand their client's goals and possess a knack for explaining options in terms that are easy to understand. Difficult personalities must be managed with patience and sensitivity. Status updates must be timely conveyed.

Of course, the ultimate outcome of a case matters, but clients also care about *how* they cross the finish line. Poor communication or a lack of empathy and understanding by counsel can dilute hard-fought efforts that otherwise produce good financial results.

Lawyers can improve client communication with active and attentive listening and by validating emotions and asking good questions. As I've written in this column before, people need to feel heard. All of us feel frustrated and angry when we think we are overlooked, ignored, or unimportant.

But when clients are given focused attention so that they feel understood and witnessed, they are more likely to open up to someone else's assessment (counsel's assessment, ideally) of the legal and practical challenges they face, how much it will cost (including the tangible and intangible costs), and the potential outcomes in court or mediation.

Better decisions

Mediators can help. Most clients want to tell the mediator what's important to them. Clients may want to hold someone accountable or feel vindicated, answers to factual questions, economic recovery or reasonable payment terms, legacy remembrances, repair business or family relationships, or defend their reputation.

Some may be concerned about how long the legal system will take before the merits of the case are decided. Litigation may divert time and energy from an institutional client's directors, executives and other employees. Mediators build trust and confidence by listening to and reflecting back what's important to parties.

In addition to bridging potential communication gaps between clients and counsel, mediators endeavor to bridge gaps between opposing parties. This is where the experience of the mediator matters because the case type and the personalities involved may influence what choices the mediator makes during the process.

Sometimes the mediator may push for a direct conversation because the parties have plenty of shared interests and the attorneys have a good working relationship. On the other hand, the mediator may keep the parties and counsel separate because the entire dynamic is toxic and few, if any, shared interests exist.

Regardless of how communication unfolds, mediators who ask good questions can help the parties make better decisions – especially if parties have some appreciation for how their own cognitive biases may be clouding their understanding of the big picture and what solutions are possible.

Looking ahead

It should go without saying but in my view, attorneys should consider how they communicate with opposing counsel before mediation. Someday they may find themselves mediating another case with that same lawyer.

Of course, lawyers know that no one is compelled to do anything in mediation. But that makes the point: for counsel and their clients to be successful at the bargaining table, the other side has to be *willing* to comply with what you want.

Everyone has a story about how opposing counsel was inefficient and disrespectful. Actions grow into reputations. Reciprocation, in the moment and over time, is a social norm.

Of course, tough cases, difficult clients and ineffective communication will persist. Some lawyers are not interested in anything other than hard-fought dollars that exceed their goals. Some clients will not have an open mind about how they evaluate their case, perhaps due to input they get from family and friends or an institution's internal settlement committee, outside of counsel's influence. Some mediators maintain narrow views about what's "really at issue" in a case and overlook solutions that are practical and satisfying to the parties.

But when clients feel that their lawyers really want to understand what matters to them and why, they are less likely to develop frustration and disappointment in the first place.

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