Cruel and Unusual Sentencing: Mandatory Minimums

This article was written by a law student for the general public.

Introduction

According to the Supreme Court of Canada, gun-related crime poses grave danger to Canadians, and the court believes the federal government has imposed clear restrictions and severe penalties for unregulated firearm use in response to this danger.[1] However, in the case of *R v Nur*, the Supreme Court considered whether mandatory minimum prison terms for prohibited and restricted firearm offences are constitutional. This case is important because it clarifies when sentencing laws go too far and become cruel and unusual punishment under the *Canadian Charter of Rights and Freedoms*.[2]

Facts

Mr. Nur and some other men were loitering outside a community centre. Police arrived, and the men scattered. An officer chased Nur and saw him throw something away. Police later discovered that the item was a loaded, prohibited firearm. The current law says a person who possesses a loaded prohibited or restricted firearm can be charged by indictment or by summary conviction.[3] Indictment carries a mandatory three-year minimum sentence. Summary conviction carries a maximum one-year sentence. Here, the Crown proceeded by indictment.

Case History

The Ontario Superior Court decided that the two-year difference between the one-year maximum for summary conviction and the three-year minimum for indictment violated the right to life, liberty, and security of the person, which is guaranteed in section 7 of the *Charter.* The Ontario Court of Appeal decided the three-year mandatory minimum sentence for possession of a loaded, prohibited weapon was cruel and unusual punishment and was contrary to section 12 of the *Charter*.[4] The Crown appealed to the Supreme Court of Canada.

Issue

Does the three-year mandatory minimum sentence for possession of a loaded, prohibited weapon infringe section 12 of the *Charter*? If so, can this infringement be justified as reasonable under section 1 of the *Charter*?

Decision

The Supreme Court decided that the three-year mandatory minimum sentence for possession of a loaded, prohibited weapon is inconsistent with section 12 of the *Charter* – it

constitutes cruel and unusual punishment. It also decided that the government's reasons for creating a law that imposed this sentence were not reasonable and justifiable. Therefore, the court declared the law requiring a three-year mandatory minimum sentence for possession of a loaded, prohibited weapon to be unconstitutional and, consequently, invalid.[5]

Analysis

A court must consider two things when it decides if a provision requiring a mandatory minimum punishment is constitutional under section 12:[6]

1. whether the provision imposes a cruel and unusual punishment for the person bringing the case forward

2. whether it is reasonably foreseeable that the provision could impose cruel and unusual punishment for other offenders

Here, Nur did not argue that the three-year mandatory minimum sentence was too severe as a punishment in his case. Instead, he argued that the sentence could be too severe for other offenders.[7]

The Supreme Court decided the sentence is a violation of section 12 because there are some situations in which a three-year sentence would be too severe for certain firearm crimes. An example of this could be imposing a three-year sentence on an offender who doesn't have any prior firearm offences. While the Crown could choose to proceed by summary conviction rather than by indictment, allowing the Crown to make that decision leaves too much power in the hands of prosecutors, which could jeopardize the fairness of the criminal process.[8]

After a court has found a breach of a *Charter* right, the government is given the opportunity to justify the law. In this case, the court found that denouncing and deterring gun crime is an important government objective and that setting mandatory minimum terms for imprisonment is logically connected to that objective. However, the court found there are less harmful ways of achieving this goal, such as by writing laws that better link mandatory minimums to a perpetrator's blameworthiness.[9] The problem with the current law is that a person who has no prior criminal record and who is found with a loaded, prohibited weapon, could be put into jail for three years. That seems cruel and unusual. Therefore, the court decided that the law requiring a minimum three-year sentence is unconstitutional and, consequently, invalid.[10]

Conclusion

This case is important because it shows that mandatory minimum sentences may come at the expense of constitutional rights. Our Constitution prevents the government from passing laws that violate rights, such as the right not to face cruel and unusual punishment. Limited exceptions can be granted under section 1 of the *Charter*, which lets courts consider whether the government's reasons for the law can be justified. In this case, the Supreme Court of Canada made clear that laws intended to deter crime are important, but they

cannot come at the expense of creating laws that are too severe for less serious offenders.

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[1] *R v Nur,* 2015 SCC 15 at para 1 .

[2] *Canadian Charter of Rights and Freedoms,* Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 12 .

[3] An indictable offence is the most serious offence under the *Criminal* Code. A summary offence is the least serious offence under the *Criminal Code.*

[4] *Nur, supra* note 1at para 25.

[5] *Ibid* at para 119.

[6] *Ibid* at para 46.

[7] *Ibid* at para 78.

[8] *Ibid* at para 96.

[9] *Ibid* at para 117.

[10] *Ibid* at para 119.