

Sentencing must be rethought

2005 legislative fix will soften Supreme Court order to adjust cases

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OK, Tennessee taxpayers. Here's a little good news/bad news for you.

The bad news: A U.S. Supreme Court decision likely will cost taxpayers some dough.

The good news: We're not California taxpayers.

At least, that's the way Nashville attorney and criminal sentencing guru David Raybin sees it.

"Gov. (Phil) Bredesen was proactive," Raybin said. "We came up with a fix. Because that was in place, we don't have to adjust tens of thousands of cases like California. They had nothing to fall back on. We do."

At issue was a legal fight, led in large part by Knoxville attorney Wade Davies, to challenge a 2005 state Supreme Court decision.

That decision sprang from a landmark U.S. Supreme Court ruling in July 2004 that struck down sentencing schemes that were mandatory in nature. The ruling seemed to affect the way Tennessee doled out punishment for crimes.

Bredesen quickly formed a task force to study the issue. The panel crafted a legislative fix, which was adopted in early 2005 by state legislators. A few months later, though, the state's high court ruled that the solution wasn't really necessary.

In the court's view, nothing was broken.

In August 2005, Davies asked the nation's highest court to take a look at that ruling and Tennessee's method of sentencing criminals. Around the same time, a California convict challenged that state's sentencing structure, which is similar to Tennessee's method.

A few weeks ago, the U.S. Supreme Court struck down California's system as unconstitutional.

On Tuesday, the court ordered Tennessee's Supreme Court to rethink its earlier decision.

"I am pleased that the justices considered the argument worthy of consideration and of an affirmative decision," Davies said.

Since California had not tackled its sentencing woes in the wake of the landmark 2004 U.S. Supreme Court decision, tens of thousands of inmates may be entitled to new sentencing hearings.

Tennessee, on the other hand, drafted a fix in 2005, limiting just how many new hearings - which cost taxpayers money - must be held.

Here's the short version of how the system worked in Tennessee and why the Supreme Court thinks it may be flawed:

Criminals face penalty ranges for their misdeeds in Tennessee.

For instance, a robber might face eight to 12 years. Before the Bredesen-ordered fix, judges were instructed to start with the minimum sentence and then consider "factors" that might boost the penalty.

Juries had no role in the sentencing process.

Along came the U.S. Supreme Court's 2004 Blakely decision, which held that juries decide facts, not judges. So, unless jurors weighed in on these sentencing-boosting factors, judges were stuck with the minimum prison terms.

The fix was to remove the mandatory minimum. Judges in Tennessee were free to send a criminal to jail for any sentence within the penalty range.

The state Supreme Court later ruled the fix wasn't necessary, but it didn't strike it down. It's still in place.

And that likely will save the day for Tennessee taxpayers, Raybin contends. Knox County District Public Defender Mark Stephens agrees.

"Without doubt, the prisoners will all be (asking) do we get to go home, do we get new sentencing hearings?" Raybin said. "Could that open up the flood gates?"

But Raybin believes only those inmates who had challenges to their sentences pending in the past couple of years will be allowed to contest their punishments.

"That part of it hasn't been decided yet," Raybin said of how far back the courts will review contested sentences. "But you're not talking thousands, in my educated guess. That probably will only involve maybe a hundred or so."

Stephens thinks it could be more but agrees that woes facing California, which never fixed its system after the Blakely decision, won't be encountered here.

"I'm thinking we're talking about potentially a lot of cases, cases that were in the pipeline prior to 2005," he said.

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