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Single case lets us know how far arc of justice has come in 40 years

In 1858 the prominent abolitionist Theodore Parker spoke before the Massachusetts Anti-Slavery Convention. He said, "I do not pretend to understand the moral universe; the arc is a long one, my eye reaches but little ways; I cannot calculate the curve and complete the figure by the experience of sight, I can divine it by conscience. And from what I see I am sure it bends towards justice."

It is easy to get discouraged some days and doubt this is true. But when I look back at my 40 years of studying criminal law, there is at least one area in which I can see some movement toward justice: the rights of the intellectually disabled. If you doubt this, I urge you to read the 1st District Appellate Court's recent opinion in *People v. Coty*, No. 1-16-2383 (Aug. 8, 2018).

It is an opinion which simply could not have been written 40 years ago.

The case concerns a 2006 conviction of predatory criminal sexual assault of a minor. The defendant, William Coty, was a 42-year-old man with an IQ somewhere between 55 and 65 (an IQ of 55 places a person in the lowest 1 percent of the population).

At his sentencing hearing, evidence was introduced that Coty received Social Security because of his mental disability. He could neither read nor write and his sister took care of him and helped with his daily routine.

Coty had a prior conviction for aggravated criminal sexual assault that he had committed 18 years before. Because this was his second such conviction, Illinois law mandated that he be given a sentence of natural life.

In 2012, the 1st District considered Coty's appeal from the denial of his petition under Section 2-1401 of the Code of Civil Procedure. The court held that Coty's intellectual disabilities rendered the natural life sentence unconstitutional under the proportionate penalties clause of the Illinois Constitution.

The court remanded the case so that Coty could be resentenced to a term of years. Coty was subsequently sentenced to 50 years in prison. He then appealed the propriety of this new sentence to the 1st District.

The court begins its opinion by noting that the term "mentally retarded" was used throughout all the proceedings in this case and in the relevant case law. But the court said that this is an outmoded term. Consequently, it refers to Coty as being "intellectually disabled" throughout the opinion. The court then held that the 50-year sentence given to the 52-year-old Coty was a violation of the Illinois Constitution's proportionate penalties clause.

This is because 50 years constituted a de facto life sentence that was imposed without sufficient weight given to the factors that can mitigate the culpability of the intellectually disabled. It ordered yet another resentencing.

Coty reminds us of the significant changes that have occurred just in the 21st century. A sentence violates the proportionate penalties clause if it is "cruel, degrading or so wholly disproportionate to the offense as to shock the moral sense of the community." But the Illinois Supreme

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Court has refused to concretely define this term because "as our society evolves, so too do our concepts of elemental decency and fairness which shape the 'moral sense' of the community."

When the court had remanded for resentencing in 2014, it did so on the basis of case law that at that time categorically prohibited the imposition of the death penalty on juveniles and intellectually disabled offenders as well

CRIMINAL PROCEDURE

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as prohibited the imposition of mandatory natural life imprisonment on juveniles. *Miller v. Alabama*, 567 U.S. 460 (2012); *Atkins v. Virginia*, 536 U.S. 304 (2002).

But here the court noted how the law has evolved just since 2014.

Citing a series of very recent U.S. Supreme Court and Illinois appellate cases, it stated that as of today it appears that community standards of decency now prohibit not only de jure, but also de facto mandatory and discretionary life sentences for juveniles where the sentencing judge gives insufficient attention to the attendant characteristics of youth.

The issue in *Coty* was whether the court should likewise prohibit discretionary de facto life sentences where the judge gave insufficient attention to the mitigating characteristics of the intellectually disabled.

The 1st District noted that in the past it had implied that adults with intellectual disabilities should be treated similarly to minors. It now unequivocally held that they should.

The court observed that the intellectually disabled, similar to juveniles, possess deficiencies that diminish their personal culpability. Like juveniles, the intellectually disabled face a greater risk of confessing to crimes they did not commit. Like juveniles, their deficiencies make it less likely that they can process those factors meant to create deterrence.

The court then turned to whether Coty's sentence could be construed as a de facto life sentence. It conceded that the Illinois Supreme Court has not yet defined what constitutes a de facto life sentence and that there is currently a split within the appellate courts.

However, the court noted that the 50-year sentence given to the 52-year-old Coty means that his actual discharge date will be 2052 — when he is 88 years old; the earliest release date on parole would be 2049. Citing statistics that the average life expectancy of a person in a general prison population is 64 years, the court held that Coty had indeed been given a de facto life sentence.

The 1st District was quite specific in its remand instructions. It held that sentencing should be done by a different judge. Noting that the public defender on the last remand did not update the 10-year-old data on Coty's intellectual disability, it urged the attorney on remand to do so.

It ordered the new sentencing judge to give serious consideration to the very real effects Coty's disability could have had on his culpability. It finally reminded the sentencing court that it should also consider whether there was now any bona fide doubt concerning Coty's current fitness to be sentenced.

Coty merits careful attention. It provides more than just lip service to the concept of "evolving community standards." It renews your hope that the moral arc might indeed occasionally bend toward justice.