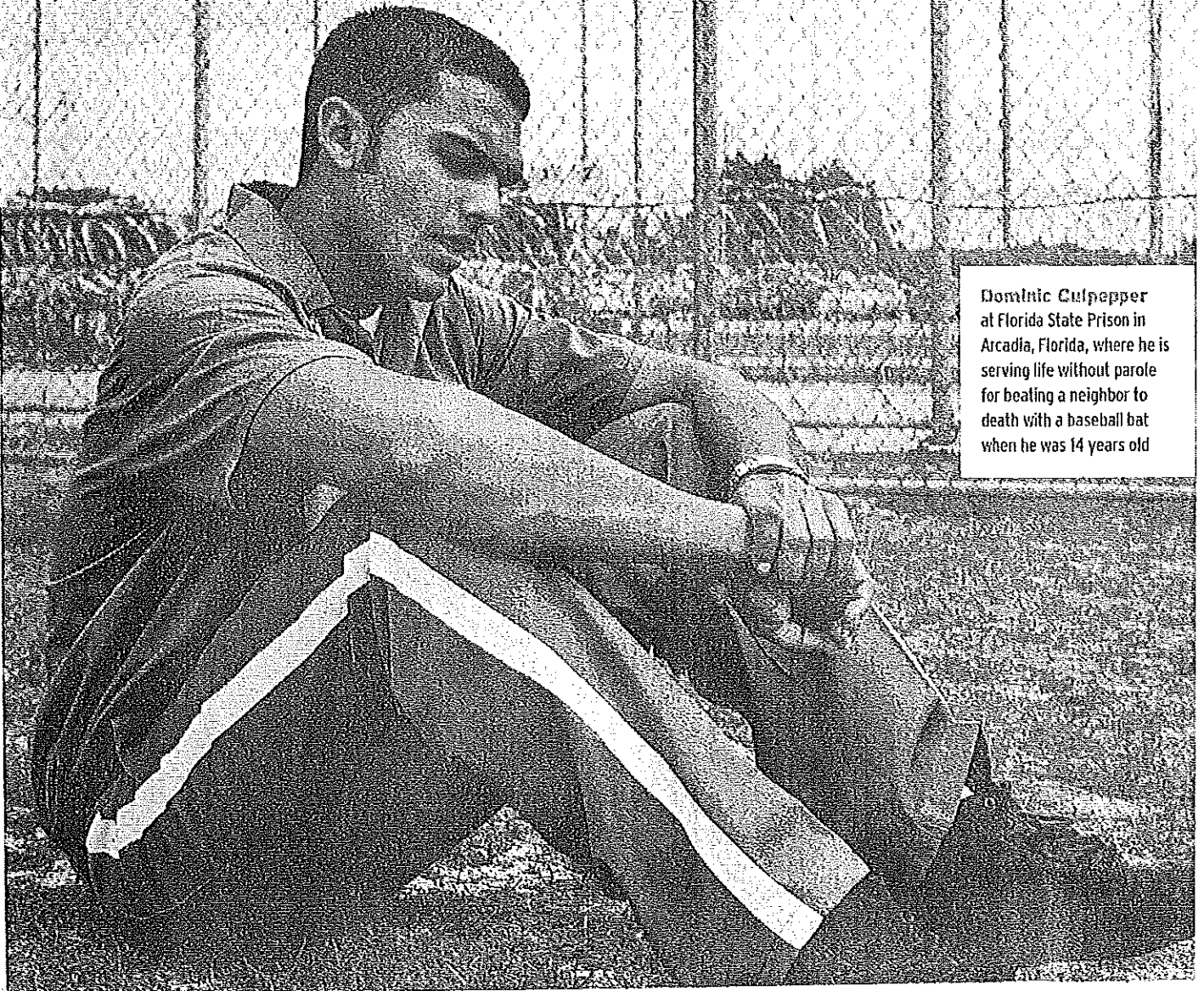


# CRIME & PUNISHMENT

The Supreme Court recently struck down mandatory sentences of life without parole for juveniles. The ruling signals a shift in how the law treats young offenders.

BY PATRICIA SMITH



Dominic Cuspepper at Florida State Prison in Arcadia, Florida, where he is serving life without parole for beating a neighbor to death with a baseball bat when he was 14 years old

**O**ne night when she was 15, Rebecca Falcon got drunk and made the worst decision of her life. Looking back, Falcon faults her choice of friends. "I was like a magnet for the wrong crowd," she says.

At the time, Falcon was living with her grandmother in Panama City, Florida. On Nov. 19, 1997, upset over an ex-boyfriend, she downed a large amount of whiskey and hailed a cab with an 18-year-old friend. He had a gun, and within minutes, the cabdriver lay dying of a gunshot to the head. Each of the teenagers later said the other had done the shooting.

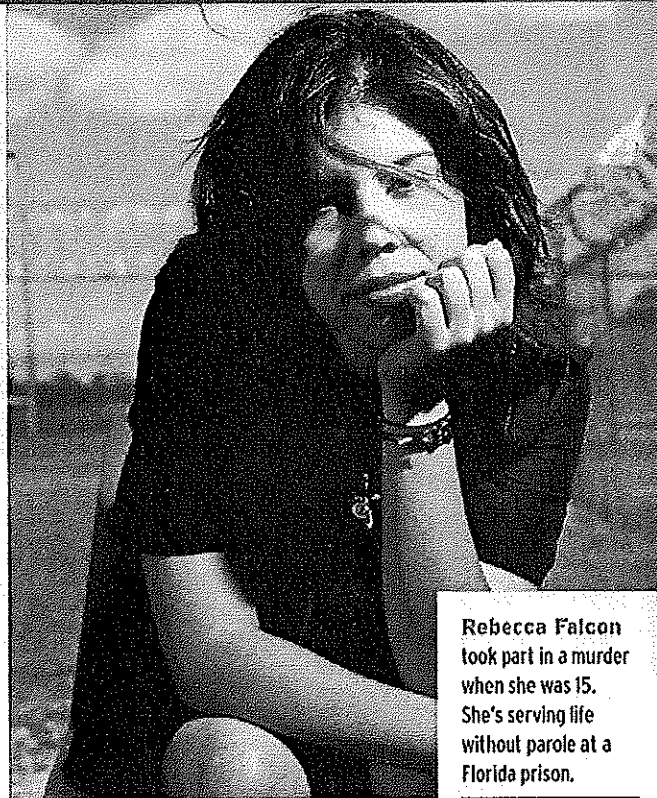
A jury found Falcon guilty of murder, though it never sorted out precisely what happened. Under Florida law, she was automatically sentenced to life in prison without the possibility of parole.

But in June the Supreme Court ruled that mandatory sentences of life without parole for juvenile offenders are unconstitutional. The Court said they violate the Eighth Amendment ban on "cruel and unusual punishments." The ruling has opened a small window of hope for Falcon and prisoners like her.

"We'll establish her rehabilitation and ask for a fairer sentence," says her lawyer, Paolo Annino, director of the Children's Advocacy Clinic at Florida State University.

The Supreme Court ruling is the strongest indication yet of a shift in how the American judicial system views violent juvenile offenders—who, until recently, were likely to be tried and punished as adults (see *Key Dates*, p. 10).

Falcon, now 30, has been imprisoned at the Lowell Correctional Institution in Ocala, Florida, for the past 13 years. She wakes up



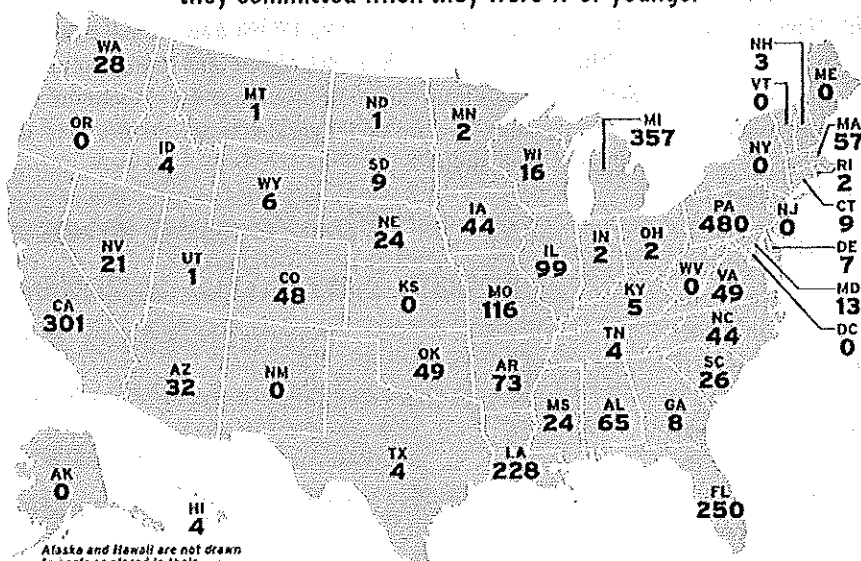
Rebecca Falcon took part in a murder when she was 15. She's serving life without parole at a Florida prison.

early, goes to her prison job, then attends classes after dinner. Every night, she sleeps in a huge room with 85 other inmates.

Human rights groups say more than 2,000 prisoners in the U.S. are serving life without parole for crimes committed when they were 17 or younger (see map). The Supreme Court decision will lead to resentencing hearings for most of these prisoners—some of them now well into middle age—in more than two dozen states.

## Life Without Parole

Number of prisoners serving life without parole for crimes they committed when they were 17 or younger



Alaska and Hawaii are not drawn to scale or placed in their proper geographic positions.

SOURCES: Estimates from The New York Times, Human Rights Watch, Amnesty International, Campaign for Fair Sentencing of Youth, Juvenile Justice Project of Louisiana, ACLU, Florida State University, and University of Pittsburgh

### WHAT THE COURT SAID

The 5-to-4 ruling in June in the cases of *Miller v. Alabama* and *Jackson v. Hobbs* did not outlaw all life sentences without parole for juveniles. It only barred states from mandating such sentences for any crimes, including murder.

But the majority opinion by Justice Elena Kagan noted that given "children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon."

Kent Scheidegger of the Criminal

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## KEY DATES in Juvenile Justice

**1899**

### Juvenile Court

The first juvenile court is established in Chicago, based on the principle that juvenile offenders need protection and treatment, not just punishment. By 1925, most states have juvenile courts.

**1966**

### *Kent v. United States*

This Supreme Court case establishes that teens can be tried as adults for the most serious crimes.

**1967**

### *In re Gault*

This landmark Supreme Court ruling establishes that juveniles are entitled to the same legal rights and due process protections as adults.

**1990s**

### Get-Tough Laws

Many state legislatures pass laws making it easier to try juvenile offenders in adult courts, subjecting them to adult sentences.

**2005**

### Death Penalty: *Roper v. Simmons*

The Supreme Court declares the death penalty unconstitutional for juvenile offenders.

**“To ensure that kids are protected, we have to recognize that they are actually different from adults.”**

**—MARSHA LEVICK,  
JUVENILE LAW CENTER**

Justice Legal Foundation, a victims' rights group, disagrees with the ruling. He thinks it means justice won't be served in the most horrific cases. “There are some truly horrible crimes committed by 17-year-olds, and those crimes deserve life without parole,” he says.

But in recent years the courts have increasingly viewed juveniles in a different light from adults who commit violent crimes. The change is a result of several factors: a drop-off in the crime wave that led states to move violent juveniles into the adult system beginning in the late 1980s; new scientific research on adolescent brain development; and the frustration of juvenile court judges with mandatory sentencing.

All this, experts say, is opening a new chapter in juvenile justice.

“What we are seeing is a very stark and important rethinking of how we treat juvenile criminal offenders,” says Marsha Levick of the Juvenile Law Center in Philadelphia. “For years we were trying to convince the courts that kids have constitutional rights just like adults. Now we realize that to ensure that kids are protected, we have to recognize that they are actually different from adults.”

Over the past decade, the Supreme Court has whittled away at the two harshest sentences in the criminal justice system: the death penalty and life without parole. In 2005, the Court ruled in *Roper v. Simmons* that the death penalty for crimes committed by people under 18 violates the Eighth Amendment. And in 2010, the Court ruled in *Graham v. Florida* that sentencing

juvenile offenders to life without parole is unconstitutional—but only for crimes that do not involve killings.

All the recent rulings cite research showing that young people are more susceptible to peer pressure than adults and that their personalities are not yet fully formed, making them less morally culpable and more capable of change later.

### TEEN BRAINS

“Even a heinous crime committed by a juvenile,” Justice Anthony Kennedy concluded in the *Roper* case, is not “evidence of irretrievably depraved character.”

In teenagers, scientists have found that the part of the brain that guides impulse control and weighs risks versus rewards is not fully mature. Research has also shown that a person's actions at age 13 or 14 are a poor indication of the kind of adult he or she will become.

“Ninety percent of teen offenders do not become adult criminals,” says Laurence Steinberg, a psychology professor at Temple University in Philadelphia. “So to make a decision to lock a person up for the rest of his life on the basis of something he's done when he's 13 just doesn't make sense.”

This year's *Miller-Jackson* Supreme Court ruling, Steinberg adds, is “a win from the point of view of developmental science” because “we are no longer debating whether kids are different from adults.”

**“There are some truly horrible crimes committed by 17-year-olds, and those crimes deserve life without parole.”**

**—KENT SCHEIDEGGER,  
CRIMINAL JUSTICE LEGAL FOUNDATION**

**2010**

**Graham v. Florida**

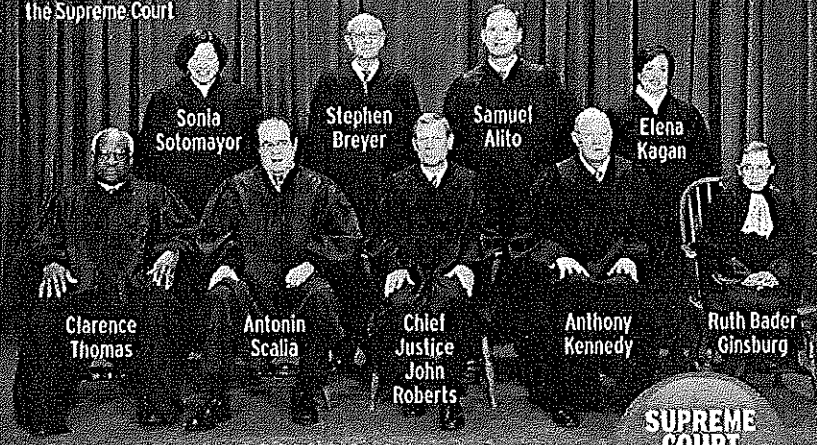
The Supreme Court rules that life without parole is unconstitutional for juvenile offenders whose crimes did not involve killings.

**2012**

**Miller v. Alabama/ Jackson v. Hobbs**

The Supreme Court rules that mandatory life without parole is unconstitutional for all juvenile offenders, even murderers.

The nine justices of the Supreme Court



Juvenile justice in the U.S. has long been on a roller coaster. Gail Garinger, a former juvenile judge, says that in the first quarter of the 20th century, nearly every state set up a juvenile court system to treat children differently. But most of these juvenile systems wound up as cruel networks of "training schools" in which young people were subject to the whims of wardens.

Starting in the late 1960s, Garinger says, when the Supreme Court was expanding the rights of adult criminals, juveniles also benefited. But in the late 1980s, spiking homicide rates spurred lots of tough-on-crime legislation. From 1985 to 1993, as the crack-cocaine epidemic spread, juvenile homicide rates tripled, and nearly every state changed its laws to be able to charge and sentence the most violent juveniles as adults.

**'INCREDIBLE HOPE'**

Nearly as suddenly, violent crime began to ebb across the country. The reasons for the drop-off are debated. William Otis, a law professor at Georgetown University and a Justice Department official under the first President George Bush, says there is little doubt that one reason for the decline is that "the people who have been committing these crimes are now in jail."

One of those is Rebecca Falcon, who says she is now a completely different person from the impetuous 15-year-old she was at the time of her crime.

"A certain amount of time being incarcerated was what I needed," she says. "But the law I fell under is for people who have no hope of being rehabilitated, that are just career criminals and habitually break the law, and there's just no hope for them in society. I'm a completely different case."

Falcon got her GED and now works as an assistant in a program that teaches life skills to female inmates who are about to be released. Religion has become a big part of her life. Her lawyer, Annino, argues that she has matured enormously during her years behind bars.

"There's the possibility that someday she will be released from prison," he says. "It gives her incredible hope." e

With reporting by Ethan Bronner and Adam Liptak of The Times.

**Supreme Cases**

Cases on the docket or likely to come before the Court this term, starting in October

**Affirmative Action**

**Fisher v. University of Texas**

The Court will reconsider whether the Equal Protection Clause of the 14th Amendment permits colleges to use race in admissions decisions. If the Court forbids the use of race, it could effectively end affirmative action in college admissions.

**Privacy Rights**

**Florida v. Jardines/Florida v. Harris**

Could a dog violate your Fourth Amendment rights? That's basically the issue in these cases. The Court will decide whether a bark by a narcotics-detection dog is probable cause for police to search a house or car.

**Voting Rights**

**Shelby County v. Holder**

A challenge to a key provision of the Voting Rights Act is likely to come before the Court this year. The Act requires states with a history of racial discrimination to get federal approval for any changes to voting procedures. The nine states that are covered say there's no longer any need for it, but the Obama administration disagrees.

**Same-Sex Marriage**

**Gill v. Office of Personnel Management/ Perry v. Brown**

Two cases involving same-sex marriage are likely to be heard this term. The Gill case challenges the constitutionality of the federal Defense of Marriage Act, which denies same-sex married couples the federal benefits of marriage. The Perry case challenges the constitutionality of Proposition 8, the 2008 California voter initiative that banned gay marriage. A ruling in either case could settle whether gay couples have a constitutional right to marry.

STEVE GRANITZ/GETTY IMAGES (SCOTUS)