

Some Harsh Sentences Prove Unjust

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So the people got sick of it, all those criminals being coddled by all those bleeding heart liberal judges with all their soft-headed concern for rights and rehabilitation.

And a wave swept this country in the Reagan years, a wave ridden by pundits and politicians seeking power, a wave that said, no mercy, no more.

From now on, judges would be severely limited in the sentences they could hand down for certain crimes, required to impose certain punishments whether or not they thought those punishments fit the circumstances at hand. From now on, there was a new mantra in American justice. From now on, we would be “tough on crime.”

We got tough on Jerry DeWayne Williams, a small-time criminal who stole a slice of pizza from a group of children. He got 25 years.

We got tough on Duane Silva, a guy with an IQ of 71 who stole a VCR and a coin collection. He got 30 to life.

We got tough on Dixie Shanahan, who shot and killed the husband who had beaten her for three days straight, punching her in the face, pounding her in the stomach, dragging her by the hair, because she refused to have an abortion. She got 50 years.

We got tough on Jeff Berryhill, who got drunk one night, kicked in an apartment door and punched a guy who was inside with Berryhill’s girlfriend. He got 25 years.

Now, we have gotten tough on Marissa Alexander. She is the Jacksonville woman who said her husband flew into a violent rage and tried to strangle her when he found text messages to her first husband on her phone. She said she fled to her car, but in her haste, forgot her keys. She took a pistol from the garage and returned to the house for them. When her husband came after her again, she fired — into the ceiling. The warning shot made him back off. No one was hurt.

Like Shanahan before her, Alexander was offered a plea bargain. Like Shanahan, she declined, reasoning that no one would convict her under the circumstances. Like Shanahan, she was wrong.

Earlier this month, Alexander got 20 years for aggravated assault. And like Shanahan, like Berryhill, Williams, Silva and Lord only knows how many others, she received that outlandish sentence not because the judge had a heart like Simon LeGree's, but because he was constrained by so-called "mandatory-minimum" sentencing guidelines that tie judges' hands, allow them no leeway for consideration, compassion, context or common sense. In other words, they prohibit judges from judging.

Charles Smith, the judge who sent Shanahan away, put it best. He said the sentence he was required to impose "may be legal, but it is wrong." Amen.

The Eighth Amendment prohibits "cruel and unusual punishment." In a nation where we execute people based on no evidence save eyewitness testimony, it is hard to imagine what meaning that prohibition still holds. But assuming it means anything, surely it means you can't draw a 20-year sentence for shooting a ceiling.

Except that Alexander just did. In restricting judges from judging, we have instituted a one-size-fits-all version of justice that bears little resemblance to the real thing. It proceeds from the same misguided thinking that produced the absurd "zero tolerance" school drug policies that get children suspended for bringing aspirin and Midol to class. In both cases, there is this silly idea that by requiring robotic adherence to inflexible rules we will produce desirable results.

By now, it should be obvious how wrongheaded and costly that reasoning was — and how urgently we need to roll back the wave that swept over us in the Reagan years. It is understandable that the nation wanted to get tough on crime. But we have been rather hard on justice, too.