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## Justice Gets a New Lease on Life

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# **JUSTICE GETS NEW LEASE ON LIFE**

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Like Genarlow Wilson, I rejoice that he has been set free. I hope Georgians join in the rejoicing.

The Georgia Supreme Court's Oct. 26 decision not only corrected a grave miscarriage of justice and liberated an American citizen imprisoned in violation of his constitutional rights, but also advanced the rights of all Georgians. The decision gives teeth to the important constitutional ban on imposing cruel sentences. Wonderfully, it indirectly delivers stern rebukes to an overzealous district attorney and a clueless attorney general. Finally, it demonstrates that Georgia courts are taking very seriously their obligation to be the ultimate guardians of our liberties, no matter what the station of the citizen whose rights are denied.

Almost all Georgians agree with the key holding of the decision: Wilson's mandatory minimum sentence of 10 years in prison for having consensual oral sex with a 15-year old girl when he was only 17 is grossly disproportionate for the crime and constitutes cruel and unusual punishment, in violation of both the federal and Georgia Bills of Rights.

In holding that Genarlow's draconian sentence was so draconian that he was entitled to immediate release from prison, the decision delivers a sharp rebuke to a district attorney who recoiled at nothing to put and keep Genarlow in prison. A district attorney entangled in the letter of the law and blind to its spirit. A district attorney who, to obtain a tactical advantage at Genarlow's trial, piled on a count of aggravated child molestation even though the legislature never imagined that prosecutors would stretch the offense to include consensual sex acts teenagers commit with other teenagers.

A district attorney's office which intimated to the mother of Genarlow's alleged molestation victim, who opposed prosecuting Genarlow, that she herself might face

criminal charges if she did not cooperate in the prosecution. A district attorney who, among other unpleasant things, said of Genarlow's dedicated, able attorney, "She has lost sight of what is best for her client." A district attorney's office which, undoubtedly as part of a strategy to embarrass Genarlow, distributed a videotape depicting child pornography.

The decision also firmly rebukes the hardline approach of the state attorney general, who unsuccessfully appealed the order of the lower court granting Genarlow habeas relief. To this day, the attorney general has never given a satisfactory explanation of his peculiar decision to take that appeal, although he has given several implausible ones. He has never acknowledged that whether to appeal was entirely a matter of his discretion; much less has he offered a credible explanation for the way he exercised that discretion. He must deeply regret that appeal, which totally backfired.

Strangely, the attorney general more than once relied on gossamer technicalities when requesting the Georgia Supreme Court to summarily dismiss Genarlow's habeas petition without regard for its obvious merits. He claimed, for example, that because the issue of whether Genarlow's sentence was cruel and unusual had not been raised in the motion for reconsideration Genarlow filed in the Georgia Court of Appeals on the direct appeal, Genarlow was barred from raising the claim in habeas corpus and would have to be penalized by remaining in prison for 10 years. On the merits, the attorney general filed briefs shrilly insisting that Genarlow's sentence was not shocking but perfectly constitutional.

During the oral arguments, when asked about the justice of Genarlow's sentence, the deputy attorney general told the Georgia Supreme Court, "That is not for the habeas court to determine." All these arguments were thumpingly rejected by the Georgia Supreme Court.

Embarrassingly, both the district attorney and the attorney general pressured Genarlow to withdraw his habeas petition, telling him they would reduce the charges if he did so. Those efforts now ring hollow and cynical.

In addition to reproofing prosecutorial excesses, the decision enhances the Georgia Supreme Court's illustrious reputation as one of the American courts most protective of liberty and rights.

In 1989, the Georgia Supreme Court held that under the state bill of rights it is unconstitutional to execute the retarded. In 1998, that Court held that, to the extent it criminalizes private consensual acts of adults, the sodomy statute violates the right to privacy secured by the state bill of rights.

In 2001, the Court became the first state supreme court to find electrocution an unconstitutional method of execution, holding that the electric chair violates the cruel and unusual punishments clause of the state bill of rights.

Now, based on both the U. S. and the Georgia Bills of Rights, the Court has breathed additional life into the ban on disproportionately excessive punishments.

This pro-rights activism is notable and commendable because the federal courts are clogged with statist/majoritarian judges who narrowly construe constitutional rights, and these days judicial protection of basic rights is increasingly dependent upon state courts.

Genarlow Wilson rejoices; so should Georgians. Amid our rejoicing, however, we should remain on guard against any efforts to weaken the writ of habeas corpus, which gloriously made possible Genarlow Wilson's return to the free world.

The writ of habeas corpus: the Great Writ, they call it. The Writ of Liberty. The Freedom Writ. The palladium and bulwark of liberty. The most celebrated writ in the law. The most valuable human right in the Constitution. The great key of liberty to unlock the prison doors of tyranny. The precious heritage of Anglo-American civilization.