

Three Strikes Law

By Chris Abbott

The California Three Strikes Law isn't working. Texas was the first state to enact a three strikes law in 1974 with a mandatory life sentence. In 1993, the state of Washington passed its three strikes law, in 1994, California, Colorado, Connecticut, Indiana, Kansas, Maryland, New Mexico, North Carolina, Virginia, Louisiana, Wisconsin, Tennessee and Georgia followed suit. In 1995, Arkansas, Florida, Montana, Nevada, New Jersey, North Dakota, and Georgia joined the pack. In 2006, Arizona passed a three strike law and in 2012 Massachusetts enacted theirs.

It is, of course, completely understandable that the voters in these states have become frustrated and frightened by high crime rates and recidivism. For voters, however, to mandate specific sentences with no discretionary ability on the part of the judges hearing the cases, is, in my opinion, contrary to the entire foundation on which the United States is based. Federalism, our form of government, is based on electing public officials to do the job as the elected officials deem right. We don't put to a public vote every issue considered for legislation. That would lead to a majority rule which is antithetical to the ideals of the founders of the nation.

There are many specific ideas around the three strikes law that can be argued: it doesn't work, it isn't fair, it's racist, it places an enormous financial burden on prisons. But to me, the concept, whether by proposition or by legislation, that a template can be created by which to sentence offenders without any possible consideration by the bench of mitigating circumstances is dangerously close to fascism. Dictatorship is dictatorship, whether the dictation comes from one person or a majority of voters. It therefore surprises me that in 2003, the United States Supreme Court voted 5-4 to reject the argument that three strikes violates the Eighth Amendment's protection against cruel-and-unusual punishment. This decision may be a result of the Rehnquist Court's drive toward a broader conception of "states' rights," that leaves little or no room for federal standards as a constitutional check on state action.

Michael Romano, director and co-founder of the Three Strikes Project, has been an outspoken opponent of the three strikes law. Romano was clerking for Judge Richard Tallman on the U.S. Court of Appeals for the Ninth Circuit in 2004.

"One afternoon, Romano watched his boss and two other judges quickly dispense with routine matters. One of them was a three-strikes appeal. 'This guy, Willie Joseph, was doing life for aiding and abetting a \$5 sale of crack cocaine,' Romano remembers." Legally speaking, his case for release was so weak that it took the judges 'less than a few minutes' to reject the appeal. And yet Willie Joseph's life sentence was effectively the same as the punishment imposed on the most vicious killers in California." Bazelon, Emily, "Arguing Three Strikes," NY Times, May 21, 2010."

Romano went to work to help Willie Joseph, but ran into one dead end after another. Frustrated, Romano took a habeas petition to one of the deputy district attorneys,

Brentford Ferreira. Would he agree that after twelve years in prison, Williams had done enough time?

Ferreira was a 24-year veteran prosecutor with little tolerance for recidivism. He responded by telling Romano that what the advocate had done with his multiple briefs and arguments was to show that all Willie Joseph knew how to do was steal. The prosecutor saw no reason to let an inmate out with no prospects but a further life of crime.

Romano got it. He knew that even one of his clients released who went back to criminal activity could destroy his entire project. And so he changed his strategy from legal to social work. His renewed efforts led to him former Napster CEO Eileen Richardson who now runs a \$500,000 program, the Downtown Streets Team, which contracts with the city of Palo Alto and local nonprofits to provide janitorial services. The work is done by former offenders and homeless people. Richardson pays them in rent subsidies and Safeway and Wal-Mart gift cards. They attend a weekly support meeting and wear different colored T-shirts as they move up a “ladder of success.”

Richardson agreed to give Willie Joseph a place on the Downtown Streets Team and with that promise, Romano persuaded Ferreira to go with him to see the judge in Long Beach. The prosecutor’s support made the difference: Williams was re-sentenced to time served. Joseph left Folsom a year ago, and started on the Streets Team mopping and waxing the floors of a local shelter. Richardson says Williams hasn’t missed a day of work since.

This is exactly the kind of activism I would like to see proliferate in our society. No one wants career criminals on the streets. Especially violent criminals. Their place is in prison. It seems to me, however, that any judge who deserves his robes can make a determination of life in prison without the aid of the legislature or their constituents. If more people could find merger strategies between the law and social reformers to forge rehabilitative, long-term living strategies—and tap the resources of people like Bill Gates and Sumner Redstone, who have benefitted greatly from our economic system and could, perhaps be convinced that they owe a debt to the society in which they live—maybe the entire penal system could be reformed to help those who have committed misdemeanor, non-violent crimes to overcome whatever personal circumstances led them to prison and give them a real chance at life.

And for those who don’t want to work their way out of a criminal life, there will be prison space available for them and a sentence handed down by a judge who understands the law, has seen for himself the evidence, has heard the jury’s verdict and has all the ability needed to determine sentencing by himself.

Sources cited:

New York Times, *Arguing Three Strikes*, Emily Bazelon, May 21, 2010

<http://www.civilrights.org/criminal-justice/sentencing/three-strikes-law.html>

<https://www.law.stanford.edu/profile/michael-romano>

ballotpedia.org/California_Proposition_47,_Reduced_Penalties_for_Some_Crimes Initiative (2014)

<https://supreme.justia.com/cases/federal/us/445/263/case.html>