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FEDERAL YOUTH CORRECTIONS ACT—YCA TREATMENT NOT REQUIRED DURING UNEXPIRED TERM OF YCA INMATE SENTENCED TO CONSECUTIVE ADULT TERM

Ralston v. Robinson, 102 S. Ct. 233 (1981).

I. INTRODUCTION

In *Ralston v. Robinson*,¹ the Supreme Court considered whether the Federal Youth Corrections Act² ("YCA" or "Act") requires YCA treatment during the unexpired term of a YCA inmate sentenced to a consecutive³ adult term. In *Robinson*, the trial judge who imposed the consecutive adult sentence for a subsequent crime had determined that further YCA treatment would not benefit the offender. The Court held that under these circumstances the Act does not require continued YCA treatment during the remainder of the inmate's YCA sentence.⁴ While the *Robinson* majority reached its result by interpreting the history and structure of the Act, the dissent properly characterized the holding as "a judicial rewriting of what 'has been accurately described as the most comprehensive federal statute concerned with sentencing.'"⁵ In addition to usurping Congress's role, the majority's opinion ignores explicit statutory alternatives, poses constitutional double jeopardy problems, and threatens a trial judge's discretion to impose a YCA sentence. *Ralston v. Robinson* thus reflects the Court's ambivalence toward the possibility of rehabilitation under the Youth Corrections Act.

Congress enacted the YCA in 1950 to provide a system for the rehabilitation and treatment of offenders under the age of twenty-two convicted in federal courts.⁶ The Act expanded a trial judge's traditional

¹ 102 S. Ct. 233 (1981).

² 18 U.S.C. §§ 5005-5026 (1976).

³ For an explanation of the distinction between a consecutive sentence and a concurrent sentence, see *infra* note 73 and accompanying text.

⁴ 102 S. Ct. at 243. The Court also held that the power to so modify the YCA sentence reposes exclusively in the judge, and not in the Bureau of Prisons. *Id.* at 240. Justice Powell filed an opinion concurring in the judgment but disagreeing with the majority's imposition of limitations on the Bureau's discretion. *Id.* at 245-46 (Powell, J., concurring).

⁵ *Id.* at 248 (Stevens, J. dissenting) (quoting *Dorszynski v. United States*, 418 U.S. 424, 432 (1974)).

⁶ As the Court in *Dorszynski v. United States*, 418 U.S. 424 (1974), explained: "The Act

sentencing discretion by authorizing sentences tailored to the rehabilitative needs of the youth offender.⁷ Under the YCA a court may: (1) place a young defendant on probation,⁸ (2) sentence the youth to a rehabilitative sentence of an indeterminate length not to exceed six years,⁹ or sentence the youth to a rehabilitative term in excess of six

is in substantial part an outgrowth of recommendations made by the Judicial Conference of the United States more than 30 years ago. The principles and procedures contained in the Conference recommendations were in turn largely based on those developed since 1894 for a system of treatment of young offenders in England, known as the Borstal system." *Id.* at 432 (footnote omitted). The legislative history of the YCA described in detail England's experience with the system:

The natural inquiry is, will the plan work? That it will has been demonstrated by the experience under the English Borstal system to which it is in many respects similar.

A report of a department committee on prisons appointed by the Home Secretary in 1894 to inquire into the administration of the English prisons found, among other things, that an extremely large number of youths between the ages of 16 and 21 passed through the prisons every year; that under the existing system numbers of these young prisoners came out of prison in a condition as bad or worse than when they went in; and that the age when the majority of habitual criminals are made lies between 16 and 21.

As a result, an experiment was begun in a wing of Bedford Prison. Younger lads were segregated from the men and a special program of trade instruction, drill, and a scheme of rewards and encouragements to industry and good conduct was introduced. A wing of the prison at Borstal was next set aside for the special handling of offenders between 16 and 23.

By the end of 1902, the entire institution at Borstal was devoted to an intensive program, for this age group, of hard work and strict discipline, tempered by contrivances of reward, encouragement, and hope. From this experimental beginning has developed what is known as the Borstal system. It now embraces 13 institutions. Some are walled. Others are completely open. Each institution has its own particular specialty . . .

While the institutions differ in many respects, they have certain things in common. These are, first, a full 16-hour day of arduous active work and recreation, leaving no time for brooding or self-pity.

Second, an individual plan based on close acquaintance with individual needs and antecedents and calculated to return the young men to society as social and rehabilitated citizens.

Third, a high degree of personal interest on the part of the staff, particularly the housemaster, whose chief job is individual guidance.

The Borstal method of rehabilitation relies on the physical, physiological, and social characteristics of youth which distinguish them from both children and adults. It is predicated on the concept that criminal youth require special treatment because of the number and kind of offenses they commit, the causation factors underlying their conduct, and the prospect they hold out for success through correctional treatment.

Three cardinal principles dominate the system: (1) flexibility, (2) individualization, and (3) emphasis on the intangibles.

H.R. REP. NO. 2979, 81st Cong., 2d Sess. 4-5, *reprinted in* 1950 U.S. CODE CONG. & AD. NEWS 3983, 3987 [hereinafter cited as H.R. REP. NO. 2979].

⁷ Under 13 U.S.C. § 5006 (1976), "youth offender" means a person under the age of twenty-two years at the time of conviction. A judge may also impose a YCA sentence on a defendant who is over twenty-two and not yet twenty-six years of age when convicted if the sentencing court affirmatively "finds that there are reasonable grounds to believe that the defendant will benefit from the treatment provided under the Federal Youth Corrections Act." 18 U.S.C. § 4216 (1976).

⁸ 18 U.S.C. § 5010(a) (1976) provides: "If the court is of the opinion that the youth offender does not need commitment, it may suspend the imposition or execution of sentence and place the youth offender on probation."

⁹ 18 U.S.C. § 5010(b) (1976) provides:

years but not to exceed the maximum otherwise provided by law.¹⁰ A court still retains the power to sentence the youth under regular adult provisions if it finds the youth will derive no benefit from a YCA sentence.¹¹

If the court shall find that a convicted person is a youth offender, and the offense is punishable by imprisonment under applicable provisions of law other than this subsection, the court may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter until discharged by the Commission as provided in section 5017(c) of this chapter.

18 U.S.C. § 5017(c)(1976) provides: "A youth offender committed under section 5010(b) of this chapter shall be released conditionally under supervision on or before the expiration of four years from the date of his conviction and shall be discharged unconditionally on or before six years from the date of his conviction." Under § 5010(b), a district court may impose a longer YCA sentence than would be authorized if the offender were sentenced as an adult. *Abernathy v. United States*, 418 F.2d 288, 290 (5th Cir. 1969); *Johnson v. United States*, 374 F.2d 966, 967 (4th Cir. 1967). As Justice Stevens noted in *Robinson*:

The federal courts unanimously have upheld § 5010(b) against constitutional equal protection challenges on the reasoning early expressed by the CHIEF JUSTICE and often quoted thereafter: "[T]he basic theory of the Act is rehabilitation and in a sense this rehabilitation may be regarded as the *quid pro quo* for a longer confinement but under different conditions and terms than a defendant would undergo in an ordinary prison"

102 S. Ct. at 250 (quoting *Carter v. United States*, 306 F.2d 283, 285 (D.C. Cir. 1962)).

Commentators have challenged the *quid pro quo* justification on the grounds that such rehabilitation is not being provided. Shepherd, *Challenging the Rehabilitative Justification for Indeterminate Sentencing in the Juvenile Justice System: The Right to Punishment*, 21 ST. LOUIS U.L.J. 12 (1977); Note, *The Federal Youth Corrections Act: Past Concern in Need of Legislative Reappraisal*, 11 AM. CRIM. L. REV. 229, 257-60 (1972); Note, *The Federal Youth Corrections Act: Flaws in Equal Protection Analysis*, 19 J. FAM. L. 295 (1981).

¹⁰ 18 U.S.C. § 5010(c) (1976) provides:

If the court shall find that the youth offender may not be able to derive maximum benefit from treatment by the Commission prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until discharge by the Commission as provided in section 5017(d) of this chapter.

Section 5017(d)(1976) provides:

A youth offender committed under section 5010(c) of this chapter shall be released conditionally under supervision not later than two years before the expiration of the term imposed by the court. He may be discharged unconditionally at the expiration of not less than one year from the date of his conditional release. He shall be discharged unconditionally on or before the expiration of the maximum sentence imposed, computed uninterruptedly from the date of conviction.

¹¹ 18 U.S.C. § 5010(d)(1976) provides: "If the court shall find that the youth offender will not derive benefit from treatment under subsection (b) or (c), then the court may sentence the youth offender under any other applicable penalty provisions." In order to invoke § 5010(d), the court must state affirmatively that the youth will not derive any benefit, although it need not provide any explanation for its "no benefit" finding. *Dorszynski v. United States*, 418 U.S. 424 (1974). 18 U.S.C. § 5010(e) (1976) provides:

If the court desires additional information as to whether a youth offender will derive benefit from treatment under subsections (b) or (c) it may order that he be committed to the custody of the Attorney General for observation and study at an appropriate classification center or agency. Within sixty days from the date of the order, or such additional period as the court may grant, the Commission shall report to the court its findings.

Offenders confined under the YCA are to be segregated from non-YCA offenders, segregated among themselves according to treatment needs, and afforded a variety of treatment options.¹² While courts disagree as to how strictly the Bureau of Prisons must comply with the YCA's segregation provisions,¹³ the legislative history clearly indicates that Congress intended that YCA inmates be segregated to prevent them from being adversely influenced by more hardened criminals.¹⁴

II. FACTS IN *RALSTON V. ROBINSON*

In 1974, John C. Robinson, then seventeen years old, entered a guilty plea to charges of second degree murder in the superior court of the District of Columbia. The trial judge sentenced Robinson under § 5010(c) of the Federal Youth Corrections Act to a ten-year term, recommending his release only upon the attainment of an eighth grade

¹² 18 U.S.C. § 5011 (1976) provides:

Committed youth offenders not conditionally released shall undergo treatment in institutions of maximum security, medium security, or minimum security types, including training schools, hospitals, farms, forestry and other camps, and other agencies that will provide the essential varieties of treatment. The Director shall from time to time designate, set aside, and adapt institutions and agencies under the control of the Department of Justice for treatment. Insofar as practical, such institutions shall be used only for treatment of committed youth offenders, and such youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment.

¹³ For example, the court in *Outing v. Bell*, 632 F.2d 1144 (4th Cir. 1980), *cert. denied*, 450 U.S. 1001 (1981), held, *inter alia*, that the YCA simply provides for segregation of YCA offenders from non-YCA offenders "insofar as practical." *Id.* at 1146; *accord* *Brown v. Carlson*, 431 F. Supp. 755 (W.D. Wis. 1977) (phrase "insofar as practical" modified both requirement of separate facilities and requirement of segregation of YCA inmates from general prison population). In contrast, the court in *United States ex rel. Dancy v. Arnold*, 572 F.2d 107 (3d Cir. 1978), held that the modifying phrase applied only to the maintenance of separate institutions and did not affect the segregation mandated by the YCA. *Id.* at 113; *accord* *Watts v. Hadden*, 469 F. Supp. 223, 235 (D. Colo. 1979) (stating that Bureau of Prisons uses "insofar as practical" phrase as pretext for refusing to segregate inmates). The narrower interpretation set forth in *Dancy* and *Watts* better reflects Congress's intent in passing the YCA. The House Report describing the Act's provisions stated: "Such institutions and agencies are to be used only for the treatment of youth offenders, so far as practicable; and youth offenders are to be segregated from other offenders, and the classes of offenders are to be segregated according to their needs for treatment." H.R. REP. NO. 2979, *supra* note 6, at 3-4.

The Supreme Court in *Ralston v. Robinson*, while noting the disagreement among courts, declined to address that issue. 102 S. Ct. at 241 n.5.

¹⁴ The House Report described the need for segregation:

By herding youth with maturity, the novice with the sophisticate, the impressionable with the hardened, and by subjecting youth offenders to the evil influences of older criminals and their teaching of criminal techniques, without the inhibitions that come from normal contacts and counteracting prophylaxis, many of our penal institutions actively spread the infection of crime and foster, rather than check it.

H.R. REP. NO. 2979, *supra* note 6, at 2-3. For a discussion of the Act's legislative design, see Note, *Sentencing Under the Federal Youth Corrections Act: The Need for an Explicit Finding and a Statement of Reasons*, 53 B.U.L. REV. 1071, 1077-79 (1973).

level of education and the successful completion of vocational training.¹⁵

In 1975, during his incarceration at the Federal Correctional Institute in Ashland, Kentucky, Robinson was found guilty of assaulting a federal officer.¹⁶ The United States District Court for the Eastern District of Kentucky determined that Robinson would not benefit from a YCA sentence and imposed an additional ten-year adult sentence. After receiving a pre-sentence report and recommendation from the Bureau of Prisons, however, the judge reduced the ten-year adult sentence to five and a half years to be served consecutively to the original YCA sentence.¹⁷ The judge also recommended that Robinson be transferred to a facility providing greater security.¹⁸

In 1977, Robinson pleaded guilty to yet another charge of assaulting a federal officer. The third trial judge¹⁹ sentenced Robinson to an adult term²⁰ of one year and one day, to run consecutively with his other sentences.²¹

After the imposition of the second adult sentence, the Bureau of Prisons classified Robinson as an adult offender,²² denying him any further YCA segregation or treatment.²³ Arguing that he was serving a YCA sentence and thus entitled to segregation, Robinson filed a petition for habeas corpus in the United States District Court for the Southern District of Indiana on May 25, 1978. The United States District Court for the Southern District of Illinois, which obtained jurisdiction when Robinson was transferred to the federal penitentiary at Marion, Illinois,

¹⁵ Robinson v. Ralston, 642 F.2d 1077, 1078 (7th Cir. 1981).

¹⁶ Robinson violated 18 U.S.C. §§ 111, 1114. Ralston v. Robinson, 102 S. Ct. 233, 237 (1981).

¹⁷ Robinson v. Ralston, 642 F.2d at 1078.

¹⁸ 102 S. Ct. at 237.

¹⁹ The United States District Court for the Central District of California tried the case because the assault occurred at the Federal Correctional Institution (FCI) at Lompoc, California. Robinson had been placed in the FCI at Oxford, Wisconsin, after his second conviction, but, due to disciplinary problems, was transferred to the Lompoc facility. *Id.*

²⁰ The third judge failed to expressly find that Robinson would derive no benefit from a YCA term. The judge was obligated to make such a finding under *Dorszynski v. United States*, 418 U.S. 424 (1974) (trial court must make "no benefit" finding before sentencing youth under 22 to adult sentence). The Supreme Court did not discuss the judge's failure since it focused on the second judge's findings. 102 S. Ct. at 244.

²¹ 102 S. Ct. at 237.

²² The Bureau of Prisons acted pursuant to its internal policy. The Bureau narrowly defines a "YCA Inmate" as "any inmate sentenced under 18 U.S.C. § 5010(b), (c), or (e) who is not also sentenced to a concurrent or consecutive adult term, whether state or federal." Bureau of Prisons Policy Statement No. 5215.2 at 1 (Dec. 12, 1978), *quoted in* Ralston v. Robinson, 102 S. Ct. 233, 237 (1981).

²³ Robinson allegedly never received YCA treatment or segregation, even when he was classified as a YCA inmate. Respondent's Brief at 2. The Supreme Court took note but declined to address the issue since it held that Robinson was not entitled to such treatment or segregation. 102 S. Ct. at 237 n.2.

granted the writ.²⁴

The seventh circuit affirmed the lower court's grant of the writ, holding that the YCA forbids the reevaluation of a YCA sentence by a second judge, even if the second judge makes an explicit finding that the offender would derive no benefit from further treatment under the YCA.²⁵ It moreover rejected the Government's argument that the YCA gives the Bureau of Prisons the discretion to decide whether a prisoner serving a YCA sentence but facing a consecutive adult sentence should continue to be treated as a YCA offender.²⁶

The Supreme Court granted certiorari²⁷ to decide whether a youth offender who is sentenced to a consecutive adult term of imprisonment while serving a YCA sentence must receive YCA treatment and segregation for the remainder of the youth sentence.²⁸

III. OPINIONS OF THE SUPREME COURT

The Court, per Justice Marshall,²⁹ held that the YCA does not require YCA treatment for an offender who is sentenced to a consecutive adult term of imprisonment while serving a YCA sentence if the judge who imposes the adult sentence finds that the offender will derive no benefit from such treatment.³⁰ The Court also stated that the YCA does not authorize the Bureau of Prisons to make the determination of whether the offender will derive benefit from the YCA; the power rests

²⁴ *Robinson v. Ralston*, 642 F.2d 1077, 1078-79 (1981). On January 7, 1980, the district court ordered the government to transfer adult offenders and to afford YCA treatment. *Id.* at 1079. The court, however, also granted the government's motion to stay the order pending appeal. Thus, on June 17, 1980, Robinson was transferred to the FCI at Memphis, Tennessee. This FCI has a YCA unit but Robinson was housed with the general adult population and did not receive YCA treatment. *Id.* The Government appealed from the order granting Robinson's writ of habeas corpus, and Robinson appealed from the stay of that order. *Id.*

²⁵ *Id.* at 1081-82.

²⁶ *Id.* at 1083.

²⁷ 101 S. Ct. 3107 (1981).

²⁸ The Court noted that the circuit courts were divided over the issue. 102 S. Ct. at 236 n.1. The seventh circuit had held that a YCA inmate who is sentenced to a consecutive adult prison term must receive YCA treatment and segregation for the remainder of the YCA sentence. *Robinson v. Ralston*, 642 F.2d 1077 (7th Cir. 1981). In *Robinson*, Judge Swygert agreed with the eighth circuit's rationale in *Mustain v. Pearson*, 592 F.2d 1018 (8th Cir. 1979) (YCA offender retained YCA status until the consecutive adult sentence began). The third and fourth circuits, however, had decided the same issue prior to the seventh circuit's ruling in *Robinson*, and both reached the opposite conclusion from that of the seventh circuit. *Outing v. Bell*, 632 F.2d 1144 (4th Cir. 1980), *cert. denied*, 450 U.S. 1001 (1981); *Thompson v. Carlson*, 624 F.2d 415 (3d Cir. 1980). Judge Swygert, for the seventh circuit, drew upon the dissent in *Thompson* to support his holding in *Robinson*. 642 F.2d at 1082.

²⁹ Chief Justice Burger and Justices Blackmun, Rehnquist, and White joined Justice Marshall's opinion. Justice Powell concurred in the result and filed a separate opinion.

³⁰ 102 S. Ct. at 243.

solely with the sentencing judge.³¹

Justice Marshall noted that "[n]o provision of the YCA explicitly governs the issue"³² of whether a judge sentencing a YCA inmate to an adult sentence may make a "no benefit" finding with respect to the remainder of the YCA term. Thus Justice Marshall relied upon the structure and legislative history of the YCA to find that a second judge may reevaluate the YCA sentence imposed by the first judge.³³

Justice Marshall concluded that courts could adjust a YCA sentence when necessary because Congress intended to provide rehabilitative treatment tailored to the needs of each offender. Otherwise, "[t]he result would be an inflexible rule requiring, in many cases, the continuation of futile YCA treatment."³⁴ Indeed, Justice Marshall pointed out that since Congress had anticipated that efforts at rehabilitation might prove futile,³⁵ Congress probably assumed that unsuccessful efforts would not be continued.

Justice Marshall rejected Robinson's argument that § 5011 of the Act—which provides that "[c]ommitted youth offenders . . . shall undergo treatment . . . and such youth offenders shall be segregated from other offenders"³⁶—prevents modification of the essential treatment and segregation requirements of a YCA sentence. He interpreted the language as requiring simply that the Bureau of Prisons carry out a court's mandate with respect to segregation and treatment, but not "as requiring the judge to make an *irrevocable* determination of segregation or treatment needs, or as precluding a subsequent judge from redetermining these needs in light of intervening events."³⁷

³¹ *Id.* at 241. Thus, the Court said that the Bureau of Prisons Policy Statement, which narrowly defined "YCA Inmate" to exclude those who were originally sentenced under the YCA but who were also sentenced to a concurrent or consecutive adult term, was a "much too broad" assertion of power. *Id.*

³² 102 S. Ct. at 241.

³³ The history and structure of the YCA . . . demonstrate Congress's intent that a court—but not prison officials—may require a youth offender to serve the remainder of a YCA sentence as an adult after the offender has received a consecutive adult term. First, the YCA prescribes certain basic elements of treatment, segregation from adults and individualized rehabilitative programs, as part of a YCA sentence. Second, sponsors of the Act repeatedly stated that its purpose was to prevent youths from becoming recidivists, and to insulate them from the insidious influence of more experienced adult criminals. Housing incorrigible youths with youths who show promise of rehabilitation would not serve this purpose. Third, the decision whether to employ the unique treatment methods of the YCA is exclusively committed to the discretion of the sentencing judge, rather than to prison officials.

Id. at 242.

³⁴ *Id.*

³⁵ "Congress did understand that the original treatment imposed by the sentencing judge might fail, and that protective as well as rehabilitative purposes might justify a lengthy confinement under § 5010(c)." *Id.* at 241 (referring to the House Report on the proposed Act).

³⁶ 18 U.S.C. § 5011.

³⁷ 102 S. Ct. at 240 (emphasis in original).

Justice Marshall drew upon other provisions of the YCA to bolster his conclusions:

[I]n several circumstances, the YCA permits a youth offender initially sentenced under the YCA to be treated as an adult for what would otherwise be the remainder of the YCA sentence. For example, the statute permits a court to sentence a defendant to an adult term if he commits an adult offense after receiving a suspended sentence and probation under § 5010(a).³⁸

Thus, Justice Marshall reasoned, “[i]t hardly seems logical to prohibit an immediate modification of respondent’s treatment conditions simply because he originally received the harsher sentence of YCA incarceration.”³⁹

While the issue in *Robinson* focused upon the consequences of a consecutive adult sentence, the Court recognized that a *concurrent* adult sentence immediately modifies the original YCA sentence. Justice Marshall declared that “it would be anomalous . . . not to permit a consecutive term to have that effect.”⁴⁰ As a practical matter, Robinson’s second trial judge could have obtained the same result—immediate alteration of the YCA term to an adult term—had the court sentenced Robinson to a concurrent adult term of an appropriately longer length to compensate for the overlap.⁴¹

Finally, Justice Marshall concluded that even though the Bureau of Prisons lacked the independent authority to change Robinson’s status from a “YCA Inmate” to an adult inmate, the modification could be justified by the second trial judge’s finding that Robinson would not benefit from further YCA treatment.⁴² Justice Marshall concluded that the second trial judge’s finding applied to the remainder of the YCA term as well as to the sentence imposed for the second crime. “In the future, we expect that judges will eliminate interpretative difficulties by making an explicit ‘no benefit’ finding with respect to the remainder of the YCA sentence.”⁴³

Justice Powell concurred with the majority’s holding that the Act does not require YCA treatment for a YCA offender who is sentenced to a consecutive adult term.⁴⁴ He filed a separate opinion, however, to

³⁸ *Id.* at 242 (footnote omitted). Justice Marshall also pointed out that the YCA contemplates reevaluation of an initial sentence for purposes of *reducing* the sentence. *Id.* at 242 n.7.

³⁹ *Id.* at 243.

⁴⁰ *Id.* at 243 n.9.

⁴¹ *Id.*

⁴² *Id.* at 244.

⁴³ *Id.* In *Ralston*, Justice Marshall bridged the “interpretative difficulties” by drawing an inference from the second judge’s “no benefit” finding. In the future, however, a subsequent judge must make an explicit “no benefit” finding with respect to the remainder of the defendant’s YCA sentence.

⁴⁴ *Id.* at 245 (Powell, J., concurring).

disagree with the majority's limitations on the Bureau of Prisons' authority under the YCA. According to Justice Powell, the YCA expressly gives the Director of the Bureau of Prisons the power to treat a YCA offender as an adult:

The Director, *inter alia*, may "order the committed youth offender confined and afforded treatment *under such conditions as he believes best* designed for the protection of the public." *Id.* at § 5015(a)(3) (emphasis added). "The Director may transfer *at any time* a committed youth offender from one agency or institution to *any* other agency or institution." *Id.* at § 5015(b) (emphasis added). . . .

Thus, the express language of YCA vests broad discretion in the Director.⁴⁵

Thus, because the "statutory emphasis . . . is on flexibility and individualized treatment,"⁴⁶ Justice Powell concluded that the Director, as well as a federal judge, possesses authority to discontinue YCA treatment. Indeed, Justice Powell argued that the Director possesses greater discretion than a court because the Director may act at any time, not simply when the YCA inmate stands convicted of a subsequent crime.⁴⁷

Justice Stevens, with whom Justices Brennan and O'Connor joined, filed a dissent. At the outset he noted that an adult sentence is more severe than a YCA sentence. Justice Stevens argued that changing a YCA sentence to an adult sentence of equal length constitutes an increase in severity which probably violates the double jeopardy clause of the fifth amendment. Even if it does not violate the Constitution, he argued, the increase in severity is invalid as contrary to congressional intent and the common law:

Whether the well-settled rule prohibiting judges from increasing the severity of a sentence after it has become final is constitutionally mandated, it is unquestionably the sort of rule that judges may not disregard without express authorization from Congress.

That rule requires a firm rejection of the argument that a second sentencing judge has power to convert an unexpired YCA sentence into an adult sentence.⁴⁸

Justice Stevens first assumed *arguendo* that Congress did not intend to have incorrigible youths housed with corrigible ones. According to Justice Stevens, this observation does not lead to the conclusion that a second judge imposing a consecutive adult sentence could confine a

⁴⁵ *Id.* at 246.

⁴⁶ *Id.*

⁴⁷ We properly defer to the Director's judgment that continued segregation from adult offenders is no longer "practical" under such circumstances. Even in the absence of subsequent felony convictions, there could be occasions when, because of a youth offender's incorrigibility and threat to the safety of others, it would be highly *impractical* to continue his segregation in a youth center.

Id. (emphasis in original).

⁴⁸ *Id.* at 246-47 (Stevens, J., dissenting) (footnotes omitted).

YCA inmate under an adult sentence for the remainder of the unexpired YCA term. A less drastic approach could address Congress's intentions equally as well: the second judge could simply impose a concurrent adult sentence and thereby end the offender's YCA treatment.⁴⁹ Justice Stevens reasoned that since this alternative is available to a sentencing judge, Congress's intent does *not* mandate the result reached by the majority.⁵⁰

Next, Justice Stevens attacked the majority's argument that since the YCA expressly permits, in some circumstances, modification of YCA probation to an adult sentence, the Act implicitly permits modification under the circumstances in *Robinson*:

I do not disagree with the Court that the imposition of a YCA sentence does not entitle an offender to YCA treatment for the full length of that sentence no matter what crimes he commits in the interim, or that [Robinson] could have been subjected to immediate adult confinement in each of the Court's examples. I do not agree, however, that a second judge may impose adult treatment on an offender who continues to be incarcerated not on the basis of a subsequent adult sentence but on the basis of the original YCA sentence. None of the Court's examples poses that situation⁵¹

In fact, Justice Stevens pointed out, since the YCA expressly permits a judge to *reduce* a sentence in light of changed circumstances, but does not expressly permit a judge to increase it, Congress did not intend modifications which increase a sentence's severity.⁵² He concluded that: "[T]he Court is bound to follow the common-law rule absent *affirmative* evidence that Congress intended to depart from that rule."⁵³

Finally, Justice Stevens suggested that "[n]ot only did Congress not intend the result reached by the Court . . . [but] there is good reason to believe that Congress intended just the opposite."⁵⁴ In enacting the YCA, Justice Stevens explained, Congress recognized that a YCA sentence, to effectuate rehabilitation, would often be of a longer duration than would be authorized or imposed if the offender were sentenced as an adult.⁵⁵ He quoted the Chief Justice's reasoning in a circuit court decision: "[T]he basic theory of the Act is rehabilitation and in a sense this rehabilitation may be regarded as comprising the *quid pro quo* for a

⁴⁹ *Id.* at 248.

⁵⁰ *Id.*

⁵¹ *Id.* at 249.

⁵² *Id.*

⁵³ *Id.* at 250 n.11 (emphasis in original). "At common law a sentence could be amended during the term in which it was imposed subject to the limitation that 'a punishment already partly suffered be not increased.'" *Id.* at 246 n.1 (quoting F. WHARTON, A TREATISE ON CRIMINAL PLEADING § 913, at 641 (9th ed. 1889)) (emphasis added by Justice Stevens).

⁵⁴ *Id.* at 249-50.

⁵⁵ *Id.* at 250.

longer confinement but under different conditions and terms than a defendant would undergo in an ordinary prison.”⁵⁶ Hence, under this *quid pro quo* theory, the Court’s holding is counter to Congress’s intent that a youth offender’s term be long enough to permit rehabilitation.⁵⁷ The modification from a YCA term to an adult term also yields unfair results to a defendant who, according to Justice Stevens, would not have served as lengthy a sentence had the defendant originally received an adult sentence.⁵⁸ Justice Stevens also raised the possibility that, knowing a YCA term could be modified to an adult sentence, the defendant would have elected to stand trial instead of entering a guilty plea.⁵⁹

Justice Stevens concluded by arguing that it was up to Congress, and not the Court, to enlarge upon the YCA to deal with unforeseen problems.⁶⁰ He considered irrelevant the issue of whether YCA treatment would in fact benefit Robinson since “Congress, by the statute applicable in this case, has mandated the continuance [of YCA treatment].”⁶¹ In Justice Stevens’ view, the only issue was “whether a federal judge . . . sentencing an inmate for an offense committed while . . . serving a sentence for an earlier crime may not only impose the punishment authorized by law for the later offense but may also take it upon himself to enhance the earlier sentence as well.”⁶²

IV. DISCUSSION

The majority in *Ralston v. Robinson*, by relying upon the “history and structure”⁶³ of the Youth Corrections Act to reach its holding, extended its focus unnecessarily beyond explicit options available under the Act. The *Robinson* Court held that a second trial judge who imposes a consecutive adult sentence upon a YCA inmate may immediately alter the inmate’s status to that of an adult offender for the remainder of the YCA term;⁶⁴ the Court could have achieved the same result by requiring a trial judge to impose a *concurrent* adult sentence if he or she finds that the inmate will derive no further benefit from the YCA term.⁶⁵

⁵⁶ *Id.* (quoting *Carter v. United States*, 306 F.2d 283, 285 (D.C. Cir. 1962)).

⁵⁷ *Id.* at 250-51.

⁵⁸ *Id.* at 251.

⁵⁹ *Id.*

⁶⁰ *Id.* at 252.

⁶¹ *Id.* at 252 n.22 (quoting Judge Pell’s concurring opinion in *Robinson v. Ralston*, 642 F.2d at 1083).

⁶² 102 S. Ct. at 252.

⁶³ 102 S. Ct. at 242.

⁶⁴ The trial court would have to make an explicit finding that the defendant would derive “no benefit” from any further YCA treatment. *Id.* at 244.

⁶⁵ The trial court could impose a longer *concurrent* adult sentence than *consecutive* adult sentence to result in the same ultimate prison sentence. *Id.* at 243 n.9. See *infra* notes 71-76 and accompanying text.

Indeed, the majority could have addressed its underlying concern that incorrigible YCA offenders be segregated from corrigible ones⁶⁶ by simply requiring enforcement of YCA provisions concerning segregation of YCA inmates from one another⁶⁷ instead of by allowing the transformation of an inmate's YCA status to that of an adult offender.⁶⁸

By ignoring the explicit statutory alternatives provided by Congress, the *Robinson* Court reached an incorrect result. It has also created two more significant problems. First, the transformation of a YCA sentence into an adult sentence by a subsequent judge constitutes an increase in the sentence's severity which, without explicit congressional support, creates double jeopardy problems.⁶⁹ Second, a subsequent judge's reevaluation of a YCA sentence impinges upon the original sentencing judge's discretion. The original judge's discretion is supposedly nonreviewable under the YCA's rehabilitative design.⁷⁰ Both these problems, as well as the availability of statutory alternatives, support the dissent's view in *Robinson*.

A. EXPLICIT STATUTORY ALTERNATIVES

1. *Concurrent adult sentence*

Both Justice Marshall's majority opinion⁷¹ and Justice Stevens's dissent⁷² recognized that a concurrent adult sentence would without question immediately change a defendant's status from "YCA inmate" into "adult inmate." The crucial issue in *Robinson* was whether a judge imposing a consecutive adult sentence could effect the same immediate change by having the inmate serve the remainder of the YCA term as an adult.

The distinction between a *concurrent* adult sentence and a *consecutive* adult sentence is important. A concurrent adult sentence cuts short a YCA sentence while a consecutive sentence does not. A concurrent adult sentence does not alter the terms of a YCA sentence; it merely means that an inmate will immediately begin to serve an adult term for

⁶⁶ The majority discussed segregation of inmates as a major feature of the Act: "[S]ponsors of the Act repeatedly stated that its purpose was to prevent youths from becoming recidivists, and to insulate them from the insidious influence of more experienced adult criminals. Housing incorrigible youths with youths who show promise of rehabilitation would not serve this purpose." 102 S. Ct. at 242.

⁶⁷ 18 U.S.C. § 5011 provides in part that: "[C]lasses of committed youth offenders shall be segregated according to their needs for treatment."

⁶⁸ See *infra* notes 89-98 and accompanying text.

⁶⁹ "[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb" U.S. CONST. amend. V. See *infra* notes 99-111 and accompanying text.

⁷⁰ See *infra* notes 113-22 and accompanying text.

⁷¹ 102 S. Ct. at 243 & n.9.

⁷² 102 S. Ct. at 248 & nn.7-8 (Stevens, J., dissenting).

a different crime. A consecutive sentence provides no overlap and hence permits a longer total term of imprisonment than a concurrent sentence.⁷³

Justice Stevens found no support in the Youth Corrections Act for allowing a second judge to impose a consecutive adult sentence while treating an inmate as an adult under the unexpired YCA term. He said: "A much less drastic solution will accomplish the objectives ascribed to Congress. The second judge may simply issue a concurrent adult sentence and thereby end the offender's YCA treatment."⁷⁴ Indeed, Justice Stevens found that under § 5017 of the Act, prison officials may treat a consecutive adult sentence as a concurrent one by terminating the YCA sentence and allowing the inmate to begin serving the "consecutive" adult sentence.⁷⁵ Thus, the language of § 5017 provides an explicit statutory avenue for immediately altering a YCA inmate's status to that of an adult offender.⁷⁶

Justice Marshall ignored this explicit statutory alternative. First, he argued that the need to segregate corrigible youth from those who show promise of rehabilitation mandated a court's power to "adjust the conditions of confinement over time" to discontinue "futile YCA treatment."⁷⁷ This need for segregation, however, does not necessarily require the solution Marshall set forth; § 5017 provides an explicit method of discontinuing futile YCA treatment.⁷⁸

Second, Justice Marshall argued that since some provisions of the YCA permit reevaluation of "what would otherwise be the remainder of a YCA sentence," reevaluation of an existing YCA sentence by a subsequent judge imposing a consecutive adult sentence was also implicitly permitted by the Act.⁷⁹ For example:

⁷³ For example, if an inmate has eight more years of a YCA sentence to serve at the time of receiving a concurrent adult sentence of ten years for a subsequent crime, the inmate will stop serving the YCA sentence and immediately begin the ten-year term. If the same YCA inmate instead receives a consecutive adult sentence of ten years, the total time to be served will be eighteen years, rather than ten. Clearly, the inmate will be an adult inmate during the final ten years. The issue in *Robinson* was whether the court in this example could have the inmate classified as an adult for the initial eight years remaining on the YCA sentence.

⁷⁴ *Id.* at 248.

⁷⁵ *Id.* 18 U.S.C. § 5017(a) provides that the U.S. Parole Commission may "at any time after reasonable notice to the Director [of the Bureau of Prisons] release conditionally under supervision a committed youth offender." *Id.* (emphasis added). 18 U.S.C. § 5017(d) provides that "[a] youth offender committed under section 5010(c) of this chapter . . . shall be discharged unconditionally on or before the expiration of the maximum sentence imposed . . ." (emphasis added). *Robinson* was sentenced under 18 U.S.C. § 5010(c). 102 S. Ct. at 236.

⁷⁶ See *supra* note 75 and accompanying text.

⁷⁷ 102 S. Ct. at 242.

⁷⁸ See *supra* note 75 and accompanying text.

⁷⁹ 102 S. Ct. at 242. Justice Marshall pointed out in a footnote that "a judge may reduce

If respondent had been sentenced initially to probation under § 5010(a) and had been subsequently convicted of criminal assault, the court could have imposed an adult sentence for the original crime, for the assault, or for both, to begin immediately. In fact, respondent committed his second crime while incarcerated. It hardly seems logical to prohibit an immediate modification of respondent's treatment conditions simply because he originally received the harsher sentence of incarceration.⁸⁰

Again, though, Justice Marshall's second argument fails to demonstrate statutory support for allowing a subsequent judge to alter a YCA term to an adult term. The examples Justice Marshall presented apply only to situations where a defendant is at liberty and violates the terms of probation, or where the judge may reduce the severity of a YCA offender's sentence. They do not apply to the situation in *Robinson*, where the judge increased the severity of a prison sentence.⁸¹ In the context of the YCA, "the most comprehensive federal statute concerned with sentencing,"⁸² Justice Stevens persuasively concluded that the "absence of statutory support is fatal"⁸³ to Justice Marshall's argument.

Finally, Justice Marshall noted that since a concurrent sentence immediately alters a YCA inmate's status to that of an adult offender, "[i]t would be anomalous . . . not to permit a consecutive term to have that effect, since a concurrent sentence is traditionally imposed as a *less* severe sanction than a consecutive sentence."⁸⁴ Justice Marshall's observation, however, does not compel the result in *Robinson*. Since judges can achieve through a concurrent adult sentence the desired result of immediately altering a YCA inmate's status to that of an adult offender, Justice Marshall need not have circumvented the statute to permit an alternative method. Justice Marshall's argument that a concurrent sentence is traditionally less severe a sanction than a consecutive one simply misses the mark⁸⁵—the YCA governs in this case, not tradition. Relying

the severity of the terms of commitment in light of changed circumstances. The YCA does not disturb 'the power of any court to suspend the imposition or execution of any sentence and place a youth offender on probation.' 18 U.S.C. § 5023." *Id.* at n.7. Also, under 18 U.S.C. § 5021, the YCA "permits a court to unconditionally discharge a youth on probation prior to the expiration of the probationary period." *Id.*

⁸⁰ *Id.* at 242-43.

⁸¹ Probation under § 5010(a) of the Act is not a "sentence" within the strict meaning of the word, but an option in lieu of sentencing. *Dunn v. United States*, 561 F.2d 259 (D.C. Cir. 1977); *United States v. Chappell*, 480 F. Supp. 321 (W.D. Okla. 1978). While Congress expressly provided for revocation of probation and institution of any applicable sentence, it did not so provide for a YCA prison term already being served.

⁸² *Dorszynski v. United States*, 418 U.S. 424, 432 (1974).

⁸³ *Ralston v. Robinson*, 102 S. Ct. at 249 (Stevens, J., dissenting).

⁸⁴ *Id.* at 243 n.9. See also *Thompson v. Carlson*, 624 F.2d 415, 422 (3d Cir. 1980).

⁸⁵ In *Thompson*, for example, the subsequent court sentenced a YCA inmate to a consecutive term of life imprisonment. 624 F.2d at 416. As a practical matter, a concurrent life term would have been no less severe.

on tradition instead of on the Act, the majority ignored express congressional commands.

Moreover, the *Robinson* holding allows more stringent sentences than were possible before. A consecutive sentence of the maximum statutory length will result in a longer combined sentence than any concurrent sentence would for the same crime. Since § 5017 of the YCA provides for termination of the YCA term under certain circumstances, it authorizes the concurrent adult sentence, not the consecutive sentence, as the method of changing a YCA inmate's status.⁸⁶ Thus, the Act itself mandates the method producing the lower ultimate sentence.⁸⁷ Indeed, the "rule of lenity"—which dictates that penal statutes be construed against the sovereign—requires a lenient construction of the YCA.⁸⁸ The majority opinion offered no statutory arguments against this more lenient approach.

2. Segregation under the YCA

The *Robinson* majority chose not to pursue a second explicit statutory alternative: confining Robinson as a YCA inmate for the remainder of his unexpired term. Justice Marshall concluded that continued treatment as a YCA inmate was inappropriate for Robinson since "housing incorrigible youths with youths who show promise of rehabilitation" would not serve the purposes of the YCA,⁸⁹ and since the second trial judge had found that Robinson would not benefit from further YCA treatment.⁹⁰

Justice Marshall discussed the need to segregate "incorrigibles" from other YCA offenders as if the only avenue open to the courts was sentencing Robinson as an adult. Yet, under § 5011, the YCA itself provides for segregation of YCA offenders *from one another* and moreover provides for housing in maximum security institutions, if necessary: "Committed youth offenders . . . shall undergo treatment in institu-

⁸⁶ See *supra* notes 75-76 and accompanying text.

⁸⁷ Statutory construction in favor of the lesser punishment is consistent with the "rule of lenity," which requires courts to resolve statutory or sentencing ambiguities in favor of leniency. See, e.g., *Thompson v. Carlson*, 624 F.2d at 422 n.8 (citing A. CAMPBELL, *LAW OF SENTENCING* 249-50 (1978) (where sentencing court is silent as to whether multiple sentences run consecutively or concurrently, judicially created "rule of lenity" will be employed to the effect that sentences will be served concurrently)).

⁸⁸ As Justice Frankfurter explained in *Bell v. United States*, 349 U.S. 81, 83 (1955):

When Congress leaves to the Judiciary the task of imputing to Congress an undeclared will, the ambiguity should be resolved in favor of lenity. And this not out of any sentimental consideration, or for want of sympathy with the purpose of Congress in proscribing evil or anti-social conduct. It may fairly be said to be a presupposition of our law to resolve doubts against the imposition of a harsher punishment.

⁸⁹ 102 S. Ct. at 242.

⁹⁰ *Id.* at 244.

tions of *maximum security*, medium security, or minimum security types . . . and classes of committed offenders shall be segregated according to their needs for treatment.”⁹¹ Hence, under the statute, the Court could have required Robinson to be housed with other YCA offenders like himself,⁹² away from adult offenders and less sophisticated YCA offenders.

Furthermore, the majority assumed, based on the general rehabilitative design of the YCA, that “Congress did not intend that a person who commits serious crimes while serving a YCA sentence should automatically receive treatment that has proven futile.”⁹³ This assumption, though, does not necessarily compel the conclusion that Robinson would derive no benefit from the remainder of his YCA term. At the time of his first adult conviction, Robinson had served only one year of his ten-year sentence under the YCA.⁹⁴ Yet, “[t]he proponents of the Youth Corrections Act repeatedly emphasized that prison officials must be given sufficient time to rehabilitate youth offenders”⁹⁵ Whether or not Robinson’s YCA treatment actually proved futile, the second trial court did not explicitly find that Robinson would not benefit from the remaining YCA sentence,⁹⁶ and he quite possibly would have declined to do so had he addressed the issue.⁹⁷

The explicit statutory provisions of the YCA concerning treatment and segregation mandate continued YCA treatment for Robinson. The YCA contains no provisions outlining the reevaluation of an existing YCA sentence by a subsequent judge sentencing an inmate for a different offense.⁹⁸ Moreover, Justice Marshall’s two proffered reasons for in-

⁹¹ 18 U.S.C. § 5011 (1976) (emphasis added).

⁹² As of December 31, 1980, there were 1,375 inmates serving YCA sentences. Of these, 175, or 12.7%, were also serving concurrent or consecutive adult sentences. Petitioner’s Brief for Certiorari at 7 n.5, *Ralston v. Robinson*, 102 S. Ct. 233 (1981).

⁹³ 102 S. Ct. at 245.

⁹⁴ *Id.* at 236-37.

⁹⁵ *Id.* at 250. See also *id.* at 250 n.15.

⁹⁶ *Id.* at 244. Justice Marshall noted: “In the future we expect that judges will eliminate interpretative difficulties by making an explicit ‘no benefit’ finding with respect to the remainder of the YCA sentence.” *Id.*

⁹⁷ *Robinson v. Ralston*, 624 F.2d 1077, 1082 (7th Cir. 1981):

[T]he two judges who subsequently imposed the consecutive adult sentences, presumably knowing that petitioner was serving a YCA sentence, might have decided to sentence petitioner as an adult precisely because he was currently a YCA prisoner—believing that after completion of YCA treatment, further treatment would not be needed; or that if petitioner had not benefited from treatment at the conclusion of his YCA sentence, he would not benefit from a second YCA sentence.

⁹⁸ Instead, the Act directs *prison and probation officers* to constantly reevaluate treatment of YCA inmates:

The Director shall cause periodic examinations and re-examinations to be made of all committed youth offenders and shall report to the Commission as to each such offender as the Commission may require. United States probation officers and supervisory

ferring such reevaluation—the need to segregate and the futility of treating Robinson—fail to justify looking beyond the YCA's language.

B. DOUBLE JEOPARDY PROBLEM

As Justice Stevens argued in his dissent, the *Robinson* holding is seriously flawed because it permits a subsequent judge to increase the severity of an existing YCA sentence without express congressional authorization.⁹⁹ The majority opinion, while acknowledging that changing a YCA sentence to an adult sentence of equal length increases the sentence's severity, replied that Congress intended this result.¹⁰⁰ The majority, however, ignored Congress's express provisions under the YCA in reaching the *Robinson* holding;¹⁰¹ hence, its argument that Congress intended the result does not alleviate the problem.

Not only is a given number of years under a YCA sentence qualitatively less severe than an adult sentence of the same length,¹⁰² but a YCA sentence is generally longer than that which an adult would receive for the same crime.¹⁰³ Rehabilitation is the *quid pro quo* for the longer YCA sentence; a YCA sentence must allow for sufficient time to rehabilitate the offender.¹⁰⁴ Thus, when a YCA sentence is changed to

agents shall likewise report to the Commission respecting youth offenders under their supervision as the Commission may direct.

18 U.S.C. § 5016 (1976).

⁹⁹ 102 S. Ct. at 246-49 (Stevens, J., dissenting).

¹⁰⁰ *Id.* at 245 n.14.

¹⁰¹ See *supra* notes 74-98 and accompanying text.

¹⁰² 102 S. Ct. at 250; *Carter v. United States*, 306 F.2d 382, 384 (D.C. Cir. 1962) (Burger, J., for the court).

¹⁰³ 102 S. Ct. at 250-51.

¹⁰⁴ *Id.* At the same time, the YCA gives prison officials the discretion to authorize the early release of those youths who progress quickly. 18 U.S.C. § 5017 (1976). The long sentence coupled with the possibility of early release addresses the problem of sentences being too long or too short for effective rehabilitation. As James V. Bennett, the Director of the Bureau of Prisons, testified:

From the hundreds of cases of this type which have come across my desk I have formed the conclusion that in the task of correcting the offender the crucial element is that of time. Attitudes, habits, interests, standards cannot be changed overnight. Training in work habits and skills requires time. Once the individual has received the maximum benefit from the institutional program, however, it is just as important that his release to the community be effected promptly. In the case of each person confined there comes a period when he has his best prospects of making good in the community. His release should occur at this time. If he is released earlier he will not be ready for the task of establishing himself; if later, he may become bitter, unsure of himself, or jittery like the athlete who is overtrained.

Rarely does a day go by in one of our institutions for younger offenders without a youth being received whose sentence is either far too long or far too short, if the institution is to carry out its objective of correctional treatment.

I have seen thousands of men rightly sent to prison but wrongly for periods so short that their imprisonment was only an expense to the Government and accomplished little so far as the rehabilitation of the man or the protection of the community was concerned. I have seen men sent to prison for so long that all efforts in their behalf were frustrated.

an adult term of the same length, it is not only qualitatively more severe but in most cases longer than the adult sentence the offender would have received had an adult sentence been imposed initially.¹⁰⁵

The double jeopardy clause prohibits subsequent increases in punishment as well as repeated prosecutions.¹⁰⁶ The clause is not violated, however, if Congress intends subsequent increases in punishment as part of the legislative design.¹⁰⁷ The *Robinson* majority argued that Congress intended such modification of punishments in the YCA: "Congress has provided a court with power to modify a sentence in light of changed circumstances Here, the statute permits a judge to modify the conditions of a YCA sentence if the offender is convicted of a subsequent adult crime and if further YCA treatment would be futile."¹⁰⁸

The majority's argument, though, is unsupported by the explicit language of the YCA.¹⁰⁹ While the YCA provides for alteration of probation if necessary,¹¹⁰ Congress did not adopt language expressly permitting a subsequent judge to change a YCA sentence into an adult sentence. Because the Court reached an incorrect holding on statutory grounds, the resultant increase in the severity of Robinson's original sentence violates the double jeopardy clause.¹¹¹

C. ENCROACHMENT UPON JUDICIAL DISCRETION

The *Robinson* holding undermines the initial trial judge's discretion

102 S. Ct. 251 n.16 (Stevens, J., dissenting) (quoting *Correctional System for Youth Offenders: Hearings on S. 1114 and S. 2609 Before a Subcomm. of the Senate Committee on the Judiciary*, 81st Cong., 1st Sess., 27 (1949)). The Court also referred to this testimony in *Durst v. United States*, 434 U.S. 542, 546 n.7 (1978) (Payment of fine as a condition of probation under the YCA upheld) (8-0 decision).

¹⁰⁵ 102 S. Ct. at 251.

¹⁰⁶ *United States v. Best*, 571 F.2d 484 (9th Cir. 1978). The Double Jeopardy Clause provides: "[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb" U.S. CONST. amend. V. The clause incorporates the common law rule that a punishment already partly suffered may not be increased. See *supra* note 53.

¹⁰⁷ *Albernaz v. United States*, 450 U.S. 333 (1981) (consecutive sentences for same act were intended by Congress, hence constitutional). See also *United States v. DiFrancesco*, 449 U.S. 117 (1980) (Congress expressly authorized increase of sentence after initial sentence was set aside on direct appeal). See generally *Brown v. Ohio*, 432 U.S. 161 (1977) (guarantee against double jeopardy is limited to assuring that court does not exceed its legislative authorization). Congress may permit subsequent sentence increases because it has the power to provide statutorily for sanctions as stringent as it deems necessary, subject to the eighth amendment's ban on cruel and unusual punishment. The double jeopardy ban applies only against the courts.

¹⁰⁸ 102 S. Ct. at 244 n.10.

¹⁰⁹ See *supra* notes 79-83 and accompanying text.

¹¹⁰ 18 U.S.C. §§ 3651-56, 5010 (1976).

¹¹¹ Justice Stevens at 102 S. Ct. at 247 n.4 likened *Robinson* to *Roberts v. United States*, 320 U.S. 264 (1943), in which the Court held that: "[H]aving exercised its discretion by sentencing an offender to a definite term of imprisonment in advance of probation, a court may not later upon revocation or probation set aside that sentence and increase the term of imprisonment." *Id.* at 272-73.

in imposing a YCA sentence. A second judge may now reevaluate the first judge's sentence in light of a crime committed subsequent to the first crime. This encroachment upon a judge's sentencing discretion is not only undesirable as a matter of policy, but is also contrary to the design of the Youth Corrections Act.

Only eight years before *Robinson*, in *Dorszynski v. United States*,¹¹² the Court recognized that the YCA was "intended to broaden the scope of judicial sentencing discretion to include the alternatives of treatment or probation thereunder."¹¹³ The *Dorszynski* Court further recognized that "well-established doctrine bars review of the exercise of sentencing discretion"¹¹⁴ Accordingly, the Court found that no appellate review is warranted once a judge exercises sentencing discretion under the YCA.¹¹⁵

If an appellate judge is not permitted to reevaluate a trial judge's imposition of a YCA sentence, a second trial judge should not be permitted to do so either. The broad sentencing discretion afforded federal judges has resulted in striking differences in the types of sentences they impose in similar cases.¹¹⁶ The variety of attitudes and experiences among federal judges concerning the YCA suggests that there would be striking differences in YCA sentencing as well.¹¹⁷ Almost certainly,

¹¹² 418 U.S. 424 (1974).

¹¹³ *Id.* at 437.

"The proposed legislation is designed to make available for the *discretionary* use of the Federal judges a system for the sentencing and treatment of [youth offenders] that will promote the rehabilitation of those who in the opinion of the sentencing judge show promise of becoming useful citizens" *Id.* at 436 (quoting H.R. REP. NO. 2979, *supra* note 6, at 4).

¹¹⁴ *Id.* at 443.

¹¹⁵ *Id.*

¹¹⁶ In the name of "individualization," sentencing judges in most jurisdictions have been given the widest leeway The most obvious drawback of allowing wide-open discretion in the name of "individualization" is the disparity it permits. Judges whose sentencing decisions are unchecked by general standards are free to decide similar cases differently. A striking illustration emerged in a recent conference of federal trial judges of the Second Circuit The facts of numerous cases were selected from the files, and each of the fifty judges present was asked to state what sentences he would have imposed. The results, in some instances, were striking discrepancies. In one case, a crime that drew a three-year sentence from one judge drew a twenty-year term and a \$65,000 fine from another. These discrepancies could not be attributed to differences in the cases being decided, since each judge was deciding on the same set of assumed facts.

A. VON HIRSCH, *DOING JUSTICE: THE CHOICE OF PUNISHMENTS* 28-29 (1980). For a report on the conference of federal trial judges, see A. PARTRIDGE & W. ELDRIDGE, *THE SECOND CIRCUIT SENTENCING STUDY: A REPORT TO THE JUDGES OF THE SECOND CIRCUIT* (1974).

¹¹⁷ A 1972 survey of federal judges conducted by the *American Criminal Law Review* yielded, *inter alia*, the following results:

- Of the 149 judges surveyed, 83 had not visited YCA facilities.
- Of the 66 who visited, 44% believed adequate treatment was being provided to YCA inmates, while 42% did not. Of those who did not visit, 31% believed the treatment to be adequate while 34% did not.
- Of those who visited the facilities, 86% did not believe courts should be required to approve the release of a YCA inmate. The figure was 89% for those who did not visit.

then, there would be differences of opinion between the trial judge who imposes a YCA sentence and a second trial judge who finds that the defendant will derive no benefit from a YCA sentence for a subsequent crime.¹¹⁸ Furthermore, the first and second trial judges differ in their approaches to sentencing. The first judge designs the YCA sentence to fit the person, not the crime;¹¹⁹ the second judge, having rejected the rehabilitative path for the offender imposes the conventional adult sentence. Under such circumstances, the second judge cannot share the first judge's views, and therefore should not be permitted to alter the first sentence.

A fundamental difficulty arises if the second judge's determination as to the original YCA sentence conflicts with what the first judge would have chosen to do under the changed circumstances. The most equitable solution would probably be to allow the second judge to sentence solely for the second crime, and allow the first judge to reevaluate the sentence for the first crime. In order to avoid encroaching upon the first judge's sentencing discretion, the *Robinson* Court could have required the second trial judge to remand the case to the first trial judge for such purposes. By placing the decision back in the hands of the initial trial judge, the Court could preserve the sentencing discretion deemed so essential to the YCA rehabilitative scheme.¹²⁰

The language of the YCA, however, does not support reevaluation and modification of a YCA prison term by either a second judge or the

Note, *The Federal Youth Corrections Act: Past Concern in Need of Legislative Reappraisal*, 11 AM. CRIM. L. REV. 229, 270-71 (1972).

¹¹⁸ A second trial judge might even disagree with the first trial judge's decision to give a youth offender an adult sentence. In a case involving the opposite situation from that in *Robinson*, the first circuit held that a trial court sentencing a young defendant already serving an adult sentence was required to make its own "no benefit" finding before declining to sentence under the Act. *United States v. Fortes*, 619 F.2d 108 (1st Cir. 1980). In *Fortes*, the second trial judge suggested that the only reason for not sentencing under the YCA was that the sentence would frustrate the judgment of the previous court. *Id.* at 126. The first circuit disagreed: "[T]he second sentence does not alter or eliminate the basic fact of the earlier imposed initial sentence. It thus cannot be deemed to 'frustrate' the first court's judgment." *Id.*

The *Fortes* court observed that a youth sentence "superimposed on an existing adult sentence" might affect "the place and terms of confinement." *Id.* (emphasis added). It did not suggest that a *consecutive* YCA sentence would have the modifying effect. Hence, the *Fortes* rationale suggests that a subsequent court should make its own determination regarding the applicability of a YCA sentence, but that it should not "frustrate" the first court's determination. In *Robinson*, unlike *Fortes*, the Supreme Court authorized a second trial court to redetermine the first sentence itself.

¹¹⁹ *Dorszynski v. United States*, 418 U.S. at 434.

¹²⁰ *See King v. Kenney*, 671 F.2d 1053 (7th Cir. 1982) (defendant, whose YCA parole was revoked by Parole Commission upon his later conviction in state court, was entitled to go back to original federal trial court to determine whether he was entitled to a YCA term instead of an adult term) (decided pursuant to *Robinson*).

original judge. The statutory provisions allow a subsequent judge either to impose a concurrent adult sentence,¹²¹ thereby terminating the original YCA sentence, or to continue the original YCA sentence.¹²² Either of these statutory routes would have enabled the *Robinson* Court to avoid encroaching upon the initial judge's sentencing discretion.

D. THE COURT'S AMBIVALENCE CONCERNING REHABILITATION

Although the Court has continuously emphasized the Act's rehabilitative goals,¹²³ in *Robinson* both the majority and the dissent doubted whether inmates such as Robinson could benefit under the Act.¹²⁴ Yet, the seventh circuit had raised a logical point: Robinson might derive benefit from the remainder of his YCA sentence regardless of the consecutive adult sentence; the second trial judge could have imposed the consecutive adult sentence because Robinson either would benefit from the unexpired YCA sentence, thus not requiring further treatment, or would not benefit, thus demonstrating the futility of further treatment.¹²⁵ Justice Marshall dismissed this argument as "sheer speculation."¹²⁶ Under a legislative scheme which presumes rehabilitation is possible for youth offenders unless otherwise explicitly shown, Justice Marshall's summary dismissal of any rehabilitative possibilities for Robinson demonstrates the Court's disillusionment about the rehabilitative ideal of the YCA.

The Court's doubts about Robinson's rehabilitative potential probably reflect the doubts of many commentators about the efficacy of rehabilitation in general.¹²⁷ In particular, many commentators are

¹²¹ See *supra* text accompanying notes 71-97.

¹²² See *supra* text accompanying notes 89-98.

¹²³ See, e.g., *Durst v. United States*, 434 U.S. 542 (1978); *Dorszynski v. United States*, 418 U.S. 424 (1974).

¹²⁴ Justice Marshall noted: "Apparently, the Court of Appeals believed that a rehabilitative purpose may have existed here. However, given the facts of this case, any such belief is sheer speculation." 102 S. Ct. at 244 n.11. Justice Stevens said: "I do not purport to know whether YCA treatment is effective for youthful offenders in general, or would serve any useful purpose for this particular offender." *Id.* at 252.

¹²⁵ 642 F.2d at 1082.

¹²⁶ 102 S. Ct. at 244 n.22.

¹²⁷ Some commentators argue that since research demonstrates that rehabilitation has not succeeded, see D. LIPTON, R. MARTINSON, & J. WILKES, *THE EFFECTIVENESS OF CORRECTIONAL TREATMENT: A SURVEY OF TREATMENT EVALUATION STUDIES* (1975), the penal system should abandon rehabilitation and adopt the notion of punishment as its central goal. See R. MCGEE, *PRISONS AND POLITICS* 131-33 (1981); A. VON HIRSCH, *DOING JUSTICE: THE CHOICE OF PUNISHMENTS* 4-6 (1980). Others argue that rehabilitation fails because it is practiced under the oppressive conditions of imprisonment. D. SULLIVAN, *THE MASK OF LOVE: CORRECTIONS IN AMERICA: TOWARD A MUTUAL AID ALTERNATIVE* 61 (1980) ("What most people failed to grasp all along amid the debates over the demise of rehabilitation is that it makes no difference whether you beat people into submission with a baseball bat (outright punishment) or with a pillow (treatment): the effect is the same."); Y. BAKAL & H. POLSKY, *REFORMING CORRECTIONS FOR JUVENILE OFFENDERS: ALTERNATIVES AND*

skeptical about the effectiveness of rehabilitating young offenders.¹²⁸ Indeed, lower courts have questioned the rehabilitative power of the YCA.¹²⁹ Yet, rehabilitation retains its defenders, who see the concept as

STRATEGIES (1979) (study of the deinstitutionalization of the Massachusetts juvenile corrections system). For a discussion of the growing disillusionment over rehabilitation, see F. ALLEN, *THE DECLINE OF THE REHABILITATIVE IDEAL* (1981).

¹²⁸ "The massive loss of confidence in the rehabilitation ideal, which gained its momentum from a series of research findings demonstrating the inefficiency of treatment interventions, has led to a rekindling of older sentencing philosophies such as retribution . . . and incapacitation." Rutherford, *Emerging Themes of Federal Youth Crime Policy*, 4 JUST. SYS. J. 88, 91 (1978). The IJA-ABA Standards governing sentences for youth offenders asserts public protection, not treatment, as the primary goal of juvenile justice. INST. OF JUDICIAL ADMIN.—AM. BAR ASS'N JOINT COMM'N ON JUVENILE JUSTICE STANDARDS, STANDARDS RELATING TO CORRECTIONS ADMINISTRATION (1980).

Public protection from juvenile crime should be explicitly acknowledged as a legitimate and central purpose of the juvenile judicial process. Controls imposed on the juvenile should be explicitly acknowledged as a legitimate and central purpose of the juvenile judicial process. Controls imposed on the juvenile should be explicit and not disguised or confused with offers of help.

Id. at 47 (commentary to Standard 1.2). "Increasingly, during the last ten years, the treatment model has been discredited." *Id.* at 88 (commentary to Standard 4.10).

Some commentators argue that juveniles above age 16 should not be treated as children at all:

There is no compelling or convincing evidence that persons aged sixteen to eighteen differ significantly from persons aged eighteen and over in their capacity to understand the outcomes and consequences of their acts . . . Youth should be given all the aid that helping and educational services can offer. But serious crime should be treated seriously regardless of the offender's age.

CONFRONTING YOUTH CRIME: REPORT OF THE TWENTIETH CENTURY FUND TASK FORCE ON SENTENCING POLICY TOWARD YOUNG OFFENDERS 25 (1978) (dissent by Marvin E. Wolfgang).

At a time when the overall trend in the criminal justice system is toward firmer punishment policies, the Task Force calls for (or perpetuates) . . . a pattern of leniency toward youth crime . . . [T]he Task Force construes the word "youth" very broadly. Were the term applied solely to those whom I have heretofore regarded as juveniles—youngsters who have not reached puberty or those who have attained it within three or four years—I would have no problem with such a lenient approach. But the Task Force has applied this term to individuals as old as twenty . . . [T]he Task Force itself recognizes that this age group is responsible for much of the crime that continues to scourge our society.

Id. at 21 (dissent by Richard H. Kuh).

Yet another commentator suggests that rehabilitable youth offenders outgrow delinquency even without treatment, hence there is no need for a separate juvenile justice system. Simpson, *Rehabilitation as the Justification of a Separate Juvenile Justice System*, 64 CALIF. L. REV. 984 (1976) (Law should provide "restrained intervention" for youth offenders).

¹²⁹ "[Federal] judges prefer to sentence the majority of young offenders under the sentencing alternatives for adults." G. MUELLER, *SENTENCING: PROCESS AND PURPOSE* 15 (1977). One reason might be that judges perceive the YCA as providing no more rehabilitation than an ordinary adult sentence. The ninth circuit found the two types of sentences to be fungible:

As the government conceded at oral argument, the original rehabilitative purposes of the YCA have generally been abandoned. See Partridge, Chaset and Eldridge, *The Sentencing Options of Federal District Judges*, 84 F.R.D. 175, 200 (1980). The Bureau of Prisons currently assigns young offenders to exactly the same institutions as the older ones, under a policy of assigning each offender to an institution of the lowest security level consistent with adequate supervision. *Id.* at 201-02. Those sentenced under the YCA receive the same educational and vocational training opportunities as do adults. *Id.* at 201-02.

viable under modified expectations.¹³⁰

As Justice Stevens pointed out, though, it is for Congress to weigh the arguments for and against rehabilitation under the YCA; only Congress may enlarge upon the statute in the manner that the *Robinson* majority took it upon itself to do.¹³¹ Even if the result in *Robinson* were desirable, it should have come from Congress, not from the Court.

V. CONCLUSION

In *Ralston v. Robinson*, the Supreme Court held that a YCA inmate sentenced to a consecutive adult term need not receive further YCA treatment under the unexpired YCA term. In so holding, however, the Court ignored alternatives provided under the statute. Instead, it engaged in what the dissent properly termed "a judicial rewriting of what 'has been accurately described as the most comprehensive federal statute concerned with sentencing.'"¹³² The Court should have held that *Robinson* must either continue to receive YCA treatment under his unexpired YCA sentence, or be sentenced to a concurrent adult term. In addition to reaching the incorrect holding on statutory grounds, the *Robinson* Court created a problem of double jeopardy and encroached upon a judge's discretion to impose a YCA sentence.

The Court may have decided to enlarge upon the meaning of the Youth Corrections Act in response to growing doubts about the efficacy of rehabilitation. The flaws of the holding in *Robinson* demonstrate that

United States v. Amidon, 627 F.2d 1023, 1026 (9th Cir. 1980) (footnote omitted).

Yet, the eighth circuit was not willing to recognize such an abandonment of the rehabilitative ideal under the YCA. In *United States v. Hudson*, 667 F.2d 767 (8th Cir. 1982), the court held that although the defendant was not receiving the mandated YCA treatment, the Bureau of Prisons should have the opportunity to rectify the situation by proceeding with a plan to be implemented by April 1, 1982: "Briefly, under this plan YCA offenders will be: (1) totally segregated from non-YCA offenders, (2) screened, evaluated and then classified for individual treatment programs, and (3) provided educational and vocational training. We commend the Bureau of Prisons for its efforts and strongly encourage it to implement diligently the policies of the YCA." *Id.* at 771.

¹³⁰ [T]o assert that rehabilitation doesn't work for offenders as a whole is not the same as saying that it cannot work for some [Also,] rehabilitation can be defined more broadly to include vocational training programs, education programs, prison jobs that translate into free world job opportunities And if it is, then . . . rehabilitation has and can "work."

R. CARLSON, *THE DILEMMAS OF CORRECTIONS* 35 (1976). Norval Morris contends that rehabilitation should be the goal of the prisons. He argues that such rehabilitation, however, must not be coerced but voluntary, or "facilitative." N. MORRIS, *THE FUTURE OF IMPRISONMENT* (1974).

¹³¹ 102 S. Ct. at 251-52.

¹³² *Id.* at 248 (quoting *Dorszynski v. United States*, 418 U.S. 424, 432 (1974)).

the Court should have deferred to Congress to provide the solution in this case.

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