

The state of Texas sentenced William Rummel to life in prison under a “three strikes and you’re out” statute. Under the Texas recidivist law, “whoever shall have been convicted three times of a felony shall on such third conviction be imprisoned for life in the penitentiary.” In 1964, Rummel pled guilty to fraudulent use of a credit card to obtain \$80 worth of goods. In 1969, he pled guilty to passing a forged check for \$28.36. These were felonies under Texas law. In 1973, Rummel was convicted of felony theft for obtaining \$120.75 by false pretenses. Rummel was sentenced to life in prison under Texas’s “three strikes” law. He appealed his conviction under the Eighth Amendment to the U.S. Constitution. The U.S. Supreme Court rejected Rummel’s appeal, and Rummel is presently serving his life sentence. [*Rummel v. Estelle*, 445 U.S. 263 (1980)] In South Dakota, Jerry Helm was convicted of his seventh felony conviction and given a life sentence without the possibility of parole under South Dakota’s recidivist statute. Helm’s seventh conviction was for passing a “no account” check for \$100. Ordinarily, the maximum punishment for this crime would have been five years in prison and a fine of \$5,000. Helm, however, was sentenced to life without parole because he already had three felony convictions for third degree burglary and felony convictions for obtaining money under false pretenses, grand larceny, and driving while intoxicated. Helm challenged the punishment, and the U.S. Supreme Court, which had three years before rejected Rummel’s appeal, reversed Helm’s life sentence. [*Solem v. Helm*, 463 U.S. 277 (1983)]

Why do you think the U.S. Supreme Court rejected Rummel’s appeal of his life sentence under the Texas recidivist law, but did not reject Helm’s appeal under the South Dakota law?

One of the big differences in the cases was that Rummel was eligible for parole and Helm was not. In deciding the case, the Court said that the Constitution required them to examine Helm's sentence to determine if it is proportionate to his crime. Applying objective criteria, we find that Helm has received the penultimate sentence for relatively minor criminal conduct. He has been treated more harshly than other criminals in the State who have committed more serious crimes. He has been treated more harshly than he would have been in any other jurisdiction, with the possible exception of a single State. We conclude that his sentence is significantly disproportionate to his crime and is therefore prohibited by the Eighth Amendment. Our conclusion is not contrary to *Rummel v. Estelle*. The *Rummel* Court recognized that some sentences of imprisonment are so disproportionate that they violate the Eighth Amendment. *Rummel* should not be read to foreclose proportionality review of sentences of imprisonment. *Rummel* did reject a proportionality challenge to a particular sentence. But since the *Rummel* Court offered no standards for determining when an Eighth Amendment violation has occurred, it is controlling only in a similar factual situation. Here, the facts are clearly distinguishable. Whereas Rummel was eligible for a reasonably early parole, Helm, at age 36, was sentenced to life with no possibility of parole."