**Supreme Court Reverses CAAF in Unanimous Opinion on UCMJ Statute of Limitations**

 In a recent unanimous opinion, the Supreme Court reversed the judgement of the CAAF and held that the prosecutions for rape of three military service members did not have to be commenced within five years of the date of the commission of the charged offenses. The issue before the Court centered around the interpretation of the phrase “punishable by death” in the UCMJ.

 During the relevant period, the UCMJ provided that the offense of rape could be “punished by death,” and that an offense “punishable by death” could be tried and punished “at any time without limitation.” The government argued that “punishable by death” means capable of punishment by death under the penalty provisions of the UCMJ, and that respondents therefore could be tried for the rape offenses at any time. Respondents argued, however—and the CAAF held—that the phrase “punishable by death” means capable of punishment by death when all applicable law is taken into account. Respondents relied on the Supreme Court’s decision in *Coker v. Georgia*, 433 U. S. 584, 592 (1977), holding that the Eighth Amendment forbids a death sentence for the rape of an adult woman. Respondents argued that, in view of *Coker*, they could not have been sentenced to death, and therefore the statute of limitations for their crimes was the 5-year statute of limitations governing non-capital offenses.

 Essentially, the dispute hinged on whether “punishable by death” was a term of art under the UCMJ that should be interpreted solely based on the provisions therein, or if instead the Court should look beyond the provisions of the UCMJ in determining whether respondents could have actually been punished by death for their offenses, taking into account relevant Supreme Court jurisprudence.

 Notwithstanding the Court’s unanimous decision in support of the government, it acknowledged that there were “reasonable arguments on both sides,” yet “found the government’s interpretation” more persuasive for the following reasons:

 *First*, the Court found that the most natural source for the meaning of a statute of limitations within the UCMJ to be other law contained in the UCMJ itself. It therefore determined that “[i]n the context of the UCMJ . . . Article 120’s directive that rape could be ‘punished by death’ is the most natural place to look for Congress’s answer to whether rape was ‘punishable by death’ within the meaning of Article 43(a).”

 *Second*,the Court stated that a principal benefit of statutes of limitations is to provide clarity, and that: “If ‘punishable by death’ in Article 43(a) means punishable by death under the penalty provisions of the UCMJ, the rule regarding the latest possible date for commencing a rape prosecution is clear . . . By contrast, if ‘punishable by death’ meant punishable by death after all applicable law is taken into account, the deadline for filing rape charges would be unclear.”

 *Third and finally*,the Court noted that the factors that lawmakers take into account when fixing the statute of limitations for a crime, such as the difficulty of assembling evidence and putting together a prosecution, “differ significantly from the considerations that underlie its Eighth Amendment decisions.” The Court therefore reasoned that “it is unlikely that lawmakers would want to tie a statute of limitations to judicial interpretations of such provisions.”

 Justice Gorsuch filed a one-paragraph concurring opinion, stating that he “continue[s] to think this Court lacks jurisdiction to hear appeals directly from the CAAF.” Nonetheless, he joined the Court’s opinion reversing the CAAF, noting that “a majority of the Court believes we have jurisdiction, and I agree with the Court’s decision on the merits.” A future case might provide a vehicle for Justice Gorsuch to expound further on his jurisdictional concerns.

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