SUPREME COURT OF THE UNITED STATES

No. 01–6978

GARY ALBERT EWING, PETITIONER *v.* CALIFORNIA

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT

[March 5, 2003]

JUSTICE O'CONNOR announced the judgment of the Court and delivered an opinion in which THE CHIEF JUSTICE and JUSTICE KENNEDY join.

In this case, we decide whether the Eighth Amendment prohibits the State of California from sentencing a repeat felon to a prison term of 25 years to life under the State's "Three Strikes and You're Out" law.

I

A

California's three strikes law reflects a shift in the State's sentencing policies toward incapacitating and deterring repeat offenders who threaten the public safety. The law was designed "to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of serious and/or violent felony offenses." Cal. Penal Code Ann. §667(b) (West 1999). On March 3, 1993, California Assemblymen Bill Jones and Jim Costa introduced Assembly Bill 971, the legislative version of what would later become the three strikes law. The Assembly Committee on Public Safety defeated the bill only weeks later. Public outrage over the defeat sparked a voter initiative to add Proposi-

tion 184, based loosely on the bill, to the ballot in the November 1994 general election.

On October 1, 1993, while Proposition 184 was circulating, 12-year-old Polly Klaas was kidnaped from her home in Petaluma, California. Her admitted killer, Richard Allen Davis, had a long criminal history that included two prior kidnaping convictions. Davis had served only half of his most recent sentence (16 years for kidnaping, assault, and burglary). Had Davis served his entire sentence, he would still have been in prison on the day that Polly Klaas was kidnaped.

Polly Klaas' murder galvanized support for the three strikes initiative. Within days, Proposition 184 was on its way to becoming the fastest qualifying initiative in California history. On January 3, 1994, the sponsors of Assembly Bill 971 resubmitted an amended version of the bill that conformed to Proposition 184. On January 31, 1994, Assembly Bill 971 passed the Assembly by a 63 to 9 margin. The Senate passed it by a 29 to 7 margin on March 3, 1994. Governor Pete Wilson signed the bill into law on March 7, 1994. California voters approved Proposition 184 by a margin of 72 to 28 percent on November 8, 1994.

California thus became the second State to enact a three strikes law. In November 1993, the voters of Washington State approved their own three strikes law, Initiative 593, by a margin of 3 to 1. U. S. Dept. of Justice, National Institute of Justice, J. Clark, J. Austin, & D. Henry, "Three Strikes and You're Out": A Review of State Legislation 1 (Sept. 1997) (hereinafter Review of State Legislation). Between 1993 and 1995, 24 States and the Federal Government enacted three strikes laws. *Ibid.* Though the three strikes laws vary from State to State, they share a common goal of protecting the public safety by providing lengthy prison terms for habitual felons.

B

California's current three strikes law consists of two virtually identical statutory schemes "designed to increase the prison terms of repeat felons." *People* v. *Superior Court of San Diego Cty. ex rel. Romero,* 13 Cal. 4th 497, 504, 917 P. 2d 628, 630 (1996) *(Romero).* When a defendant is convicted of a felony, and he has previously been convicted of one or more prior felonies defined as "serious" or "violent" in Cal. Penal Code Ann. §§667.5 and 1192.7 (West Supp. 2002), sentencing is conducted pursuant to the three strikes law. Prior convictions must be alleged in the charging document, and the defendant has a right to a jury determination that the prosecution has proved the prior convictions beyond a reasonable doubt. §1025; §1158 (West 1985).

If the defendant has one prior "serious" or "violent" felony conviction, he must be sentenced to "twice the term otherwise provided as punishment for the current felony conviction." §667(e)(1) (West 1999); §1170.12(c)(1) (West Supp. 2002). If the defendant has two or more prior "serious" or "violent" felony convictions, he must receive "an indeterminate term of life imprisonment." §667(e)(2)(A) (West 1999); §1170.12(c)(2)(A) (West Supp. 2002). Defendants sentenced to life under the three strikes law become eligible for parole on a date calculated by reference to a "minimum term," which is the greater of (a) three times the term otherwise provided for the current conviction, (b) 25 years, or (c) the term determined by the court pursuant to §1170 for the underlying conviction, including any enhancements. §§667(e)(2)(A)(i–iii) (West 1999); §§1170.12(c)(2)(A)(i–iii) (West Supp. 2002).

Under California law, certain offenses may be classified as either felonies or misdemeanors. These crimes are known as "wobblers." Some crimes that would otherwise be misdemeanors become "wobblers" because of the defendant's prior record. For example, petty theft, a misde-

meanor, becomes a "wobbler" when the defendant has previously served a prison term for committing specified theft-related crimes. §490 (West 1999); §666 (West Supp. 2002). Other crimes, such as grand theft, are "wobblers" regardless of the defendant's prior record. See §489(b) (West 1999). Both types of "wobblers" are triggering offenses under the three strikes law only when they are treated as felonies. Under California law, a "wobbler" is presumptively a felony and "remains a felony except when the discretion is actually exercised" to make the crime a misdemeanor. *People* v. *Williams*, 27 Cal. 2d 220, 229, 163 P. 2d 692, 696 (1945) (emphasis deleted and internal quotation marks omitted).

In California, prosecutors may exercise their discretion to charge a "wobbler" as either a felony or a misdemeanor. Likewise, California trial courts have discretion to reduce a "wobbler" charged as a felony to a misdemeanor either before preliminary examination or at sentencing to avoid imposing a three strikes sentence. Cal. Penal Code Ann. §§17(b)(5), 17(b)(1) (West 1999); *People* v. *Superior Court of Los Angeles Cty. ex rel. Alvarez*, 14 Cal. 4th 968, 978, 928 P. 2d 1171, 1177–1178 (1997). In exercising this discretion, the court may consider "those factors that direct similar sentencing decisions," such as "the nature and circumstances of the offense, the defendant's appreciation of and attitude toward the offense, . . . [and] the general objectives of sentencing." *Ibid.* (internal quotation marks and citations omitted).

California trial courts can also vacate allegations of prior "serious" or "violent" felony convictions, either on motion by the prosecution or *sua sponte*. *Romero*, *supra,* at 529–530, 917 P. 2d, at 647–648. In ruling whether to vacate allegations of prior felony convictions, courts consider whether, "in light of the nature and circumstances of [the defendant's] present felonies and prior serious and/or violent felony convictions, and the particulars of his back-

ground, character, and prospects, the defendant may be deemed outside the [three strikes'] scheme's spirit, in whole or in part." *People* v. *Williams*, 17 Cal. 4th 148, 161, 948 P. 2d 429, 437 (1998). Thus, trial courts may avoid imposing a three strikes sentence in two ways: first, by reducing "wobblers" to misdemeanors (which do not qualify as triggering offenses), and second, by vacating allegations of prior "serious" or "violent" felony convictions.

C

On parole from a 9-year prison term, petitioner Gary Ewing walked into the pro shop of the El Segundo Golf Course in Los Angeles County on March 12, 2000. He walked out with three golf clubs, priced at $399 apiece, concealed in his pants leg. A shop employee, whose suspicions were aroused when he observed Ewing limp out of the pro shop, telephoned the police. The police apprehended Ewing in the parking lot.

Ewing is no stranger to the criminal justice system. In 1984, at the age of 22, he pleaded guilty to theft. The court sentenced him to six months in jail (suspended), three years' probation, and a $300 fine. In 1988, he was convicted of felony grand theft auto and sentenced to one year in jail and three years' probation. After Ewing completed probation, however, the sentencing court reduced the crime to a misdemeanor, permitted Ewing to withdraw his guilty plea, and dismissed the case. In 1990, he was convicted of petty theft with a prior and sentenced to 60 days in the county jail and three years' probation. In 1992, Ewing was convicted of battery and sentenced to 30 days in the county jail and two years' summary probation. One month later, he was convicted of theft and sentenced to 10 days in the county jail and 12 months' probation. In January 1993, Ewing was convicted of burglary and sentenced to 60 days in the county jail and one year's summary probation. In February 1993, he was convicted of

possessing drug paraphernalia and sentenced to six months in the county jail and three years' probation. In July 1993, he was convicted of appropriating lost property and sentenced to 10 days in the county jail and two years' summary probation. In September 1993, he was convicted of unlawfully possessing a firearm and trespassing and sentenced to 30 days in the county jail and one year's probation.

In October and November 1993, Ewing committed three burglaries and one robbery at a Long Beach, California, apartment complex over a 5-week period. He awakened one of his victims, asleep on her living room sofa, as he tried to disconnect her video cassette recorder from the television in that room. When she screamed, Ewing ran out the front door. On another occasion, Ewing accosted a victim in the mailroom of the apartment complex. Ewing claimed to have a gun and ordered the victim to hand over his wallet. When the victim resisted, Ewing produced a knife and forced the victim back to the apartment itself. While Ewing rifled through the bedroom, the victim fled the apartment screaming for help. Ewing absconded with the victim's money and credit cards.

On December 9, 1993, Ewing was arrested on the premises of the apartment complex for trespassing and lying to a police officer. The knife used in the robbery and a glass cocaine pipe were later found in the back seat of the patrol car used to transport Ewing to the police station. A jury convicted Ewing of first-degree robbery and three counts of residential burglary. Sentenced to nine years and eight months in prison, Ewing was paroled in 1999.

Only 10 months later, Ewing stole the golf clubs at issue in this case. He was charged with, and ultimately convicted of, one count of felony grand theft of personal property in excess of $400. See Cal. Penal Code Ann., §484 (West Supp. 2002); §489 (West 1999). As required by the

three strikes law, the prosecutor formally alleged, and the trial court later found, that Ewing had been convicted previously of four serious or violent felonies for the three burglaries and the robbery in the Long Beach apartment complex. See §667(g) (West 1999); §1170.12(e) (West Supp. 2002).

At the sentencing hearing, Ewing asked the court to reduce the conviction for grand theft, a "wobbler" under California law, to a misdemeanor so as to avoid a three strikes sentence. See §17(b) (West 1999); §667(d)(1); §1170.12(b)(1) (West Supp. 2002). Ewing also asked the trial court to exercise its discretion to dismiss the allegations of some or all of his prior serious or violent felony convictions, again for purposes of avoiding a three strikes sentence. See *Romero*, 13 Cal. 4th, at 529–531, 917 P. 2d, at 647–648. Before sentencing Ewing, the trial court took note of his entire criminal history, including the fact that he was on parole when he committed his latest offense. The court also heard arguments from defense counsel and a plea from Ewing himself.

In the end, the trial judge determined that the grand theft should remain a felony. The court also ruled that the four prior strikes for the three burglaries and the robbery in Long Beach should stand. As a newly convicted felon with two or more "serious" or "violent" felony convictions in his past, Ewing was sentenced under the three strikes law to 25 years to life.

The California Court of Appeal affirmed in an unpublished opinion. No. B143745 (Apr. 25, 2001). Relying on our decision in *Rummel* v. *Estelle,* 445 U. S. 263 (1980), the court rejected Ewing's claim that his sentence was grossly disproportionate under the Eighth Amendment. Enhanced sentences under recidivist statutes like the three strikes law, the court reasoned, serve the "legitimate goal" of deterring and incapacitating repeat offenders. The Supreme Court of California denied Ewing's petition for review, and we granted certiorari, 535 U. S. 969 (2002). We now affirm.

II

A

The Eighth Amendment, which forbids cruel and unusual punishments, contains a "narrow proportionality principle" that "applies to noncapital sentences." *Harmelin* v. *Michigan,* 501 U. S. 957, 996–997 (1991) (KENNEDY, J., concurring in part and concurring in judgment); cf. *Weems* v. *United States,* 217 U. S. 349, 371 (1910); *Robinson* v. *California,* 370 U. S. 660, 667 (1962) (applying the Eighth Amendment to the States via the Fourteenth Amendment). We have most recently addressed the proportionality principle as applied to terms of years in a series of cases beginning with *Rummel* v. *Estelle, supra.*

In *Rummel*, we held that it did not violate the Eighth Amendment for a State to sentence a three-time offender to life in prison with the possibility of parole. *Id.,* at 284–285. Like Ewing, Rummel was sentenced to a lengthy prison term under a recidivism statute. Rummel's two prior offenses were a 1964 felony for "fraudulent use of a credit card to obtain $80 worth of goods or services," and a 1969 felony conviction for "passing a forged check in the amount of $28.36." *Id.,* at 265. His triggering offense was a conviction for felony theft—"obtaining $120.75 by false pretenses." *Id.,* at 266.

This Court ruled that "[h]aving twice imprisoned him for felonies, Texas was entitled to place upon Rummel the onus of one who is simply unable to bring his conduct within the social norms prescribed by the criminal law of the State." *Id.,* at 284. The recidivism statute "is nothing more than a societal decision that when such a person commits yet another felony, he should be subjected to the admittedly serious penalty of incarceration for life, subject only to the State's judgment as to whether to grant him parole." *Id.,* at 278. We noted that this Court "has on occasion stated that the Eighth Amendment prohibits imposition of a sentence that is grossly disproportionate to

the severity of the crime." *Id.,* at 271. But "[o]utside the context of capital punishment, successful challenges to the proportionality of particular sentences have been exceedingly rare." *Id.,* at 272. Although we stated that the proportionality principle "would . . . come into play in the extreme example . . . if a legislature made overtime parking a felony punishable by life imprisonment," *id.,* at 274, n. 11, we held that "the mandatory life sentence imposed upon this petitioner does not constitute cruel and unusual punishment under the Eighth and Fourteenth Amendments" *id.,* at 285.

In *Hutto* v. *Davis,* 454 U. S. 370 (1982) *(per curiam)*, the defendant was sentenced to two consecutive terms of 20 years in prison for possession with intent to distribute nine ounces of marijuana and distribution of marijuana. We held that such a sentence was constitutional: "In short, *Rummel* stands for the proposition that federal courts should be reluctant to review legislatively mandated terms of imprisonment, and that successful challenges to the proportionality of particular sentences should be exceedingly rare." *Id.,* at 374 (citations and internal quotation marks omitted).

Three years after *Rummel*, in *Solem* v. *Helm,* 463 U. S. 277, 279 (1983), we held that the Eighth Amendment prohibited "a life sentence without possibility of parole for a seventh nonviolent felony." The triggering offense in *Solem* was "uttering a 'no account' check for $100." *Id.,* at 281. We specifically stated that the Eighth Amendment's ban on cruel and unusual punishments "prohibits . . . sentences that are disproportionate to the crime committed," and that the "constitutional principle of proportionality has been recognized explicitly in this Court for almost a century." *Id.,* at 284, 286. The *Solem* Court then explained that three factors may be relevant to a determination of whether a sentence is so disproportionate that it violates the Eighth Amendment: "(i) the gravity of the

offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions." *Id.,* at 292.

Applying these factors in *Solem*, we struck down the defendant's sentence of life without parole. We specifically noted the contrast between that sentence and the sentence in *Rummel*, pursuant to which the defendant was eligible for parole. 463 U. S., at 297; see also *id.,* at 300 ("[T]he South Dakota commutation system is fundamentally different from the parole system that was before us in *Rummel*"). Indeed, we explicitly declined to overrule *Rummel*: "[O]ur conclusion today is not inconsistent with *Rummel* v. *Estelle*." 463 U. S., at 303, n. 32; see also *id.,* at 288, n. 13 ("[O]ur decision is entirely consistent with this Court's prior cases—including *Rummel* v. *Estelle*").

Eight years after *Solem*, we grappled with the proportionality issue again in *Harmelin*, *supra*. *Harmelin* was not a recidivism case, but rather involved a first-time offender convicted of possessing 672 grams of cocaine. He was sentenced to life in prison without possibility of parole. A majority of the Court rejected Harmelin's claim that his sentence was so grossly disproportionate that it violated the Eighth Amendment. The Court, however, could not agree on why his proportionality argument failed. JUSTICE SCALIA, joined by THE CHIEF JUSTICE, wrote that the proportionality principle was "an aspect of our death penalty jurisprudence, rather than a generalizable aspect of Eighth Amendment law." *Id.,* at 994. He would thus have declined to apply gross disproportionality principles except in reviewing capital sentences. *Ibid.*

JUSTICE KENNEDY, joined by two other Members of the Court, concurred in part and concurred in the judgment. JUSTICE KENNEDY specifically recognized that "[t]he Eighth Amendment proportionality principle also applies to noncapital sentences." *Id.,* at 997. He then identified

four principles of proportionality review—"the primacy of the legislature, the variety of legitimate penological schemes, the nature of our federal system, and the requirement that proportionality review be guided by objective factors"—that "inform the final one: The Eighth Amendment does not require strict proportionality between crime and sentence. Rather, it forbids only extreme sentences that are 'grossly disproportionate' to the crime." *Id.*, at 1001 (citing *Solem, supra,* at 288). JUSTICE KENNEDY's concurrence also stated that *Solem* "did not mandate" comparative analysis "within and between jurisdictions." 501 U. S., at 1004–1005.

The proportionality principles in our cases distilled in JUSTICE KENNEDY's concurrence guide our application of the Eighth Amendment in the new context that we are called upon to consider.

B

For many years, most States have had laws providing for enhanced sentencing of repeat offenders. See, *e.g.*, U. S. Dept. of Justice, Bureau of Justice Assistance, National Assessment of Structured Sentencing (1996). Yet between 1993 and 1995, three strikes laws effected a sea change in criminal sentencing throughout the Nation.[1] These laws responded to widespread public concerns about crime by targeting the class of offenders who pose the greatest threat to public safety: career criminals. As one of the chief architects of California's three strikes law has explained: "Three Strikes was intended to go beyond

---

[1] It is hardly surprising that the statistics relied upon by JUSTICE BREYER show that prior to the enactment of the three strikes law, "*no* one like Ewing could have served more than *10* years in prison." *Post*, at 9 (dissenting opinion). Profound disappointment with the perceived lenity of criminal sentencing (especially for repeat felons) led to passage of three strikes laws in the first place. See, *e.g.*, Review of State Legislation 1.

simply making sentences tougher. It was intended to be a focused effort to create a sentencing policy that would use the judicial system to reduce serious and violent crime." Ardaiz, California's Three Strikes Law: History, Expectations, Consequences 32 McGeorge L. Rev. 1, 12 (2000) (hereinafter Ardaiz).

Throughout the States, legislatures enacting three strikes laws made a deliberate policy choice that individuals who have repeatedly engaged in serious or violent criminal behavior, and whose conduct has not been deterred by more conventional approaches to punishment, must be isolated from society in order to protect the public safety. Though three strikes laws may be relatively new, our tradition of deferring to state legislatures in making and implementing such important policy decisions is longstanding. *Weems,* 217 U. S., at 379; *Gore* v. *United States,* 357 U. S. 386, 393 (1958); *Payne* v. *Tennessee,* 501 U. S. 808, 824 (1991); *Rummel,* U. S., at 274; *Solem,* 463 U. S., at 290; *Harmelin*, 501 U. S., at 998 (KENNEDY, J., concurring in part and concurring in judgment).

Our traditional deference to legislative policy choices finds a corollary in the principle that the Constitution "does not mandate adoption of any one penological theory." *Id.*, at 999 (KENNEDY, J., concurring in part and concurring in judgment). A sentence can have a variety of justifications, such as incapacitation, deterrence, retribution, or rehabilitation. See 1 W. LaFave & A. Scott, Substantive Criminal Law §1.5, pp. 30–36 (1986) (explaining theories of punishment). Some or all of these justifications may play a role in a State's sentencing scheme. Selecting the sentencing rationales is generally a policy choice to be made by state legislatures, not federal courts.

When the California Legislature enacted the three strikes law, it made a judgment that protecting the public safety requires incapacitating criminals who have already been convicted of at least one serious or violent crime. Nothing

in the Eighth Amendment prohibits California from making that choice. To the contrary, our cases establish that "States have a valid interest in deterring and segregating habitual criminals." *Parke* v. *Raley,* 506 U. S. 20, 27 (1992); *Oyler* v. *Boles,* 368 U. S. 448, 451 (1962) ("[T]he constitutionality of the practice of inflicting severer criminal penalties upon habitual offenders is no longer open to serious challenge"). Recidivism has long been recognized as a legitimate basis for increased punishment. See *Almendarez-Torres* v. *United States,* 523 U. S. 224, 230 (1998) (recidivism "is as typical a sentencing factor as one might imagine"); *Witte* v. *United States,* 515 U. S. 389, 399 (1995) ("In repeatedly upholding such recidivism statutes, we have rejected double jeopardy challenges because the enhanced punishment imposed for the later offense . . . [is] 'a stiffened penalty for the latest crime, which is considered to be an aggravated offense because a repetitive one'" (quoting *Gryger* v. *Burke,* 334 U. S. 728, 732 (1948))).

California's justification is no pretext. Recidivism is a serious public safety concern in California and throughout the Nation. According to a recent report, approximately 67 percent of former inmates released from state prisons were charged with at least one "serious" new crime within three years of their release. See U. S. Dept. of Justice, Bureau of Justice Statistics, P. Langan & D. Levin, Special Report: Recidivism of Prisoners Released in 1994, p. 1 (June 2002). In particular, released property offenders like Ewing had higher recidivism rates than those released after committing violent, drug, or public-order offenses. *Id.*, at 8. Approximately 73 percent of the property offenders released in 1994 were arrested again within three years, compared to approximately 61 percent of the violent offenders, 62 percent of the public-order offenders, and 66 percent of the drug offenders. *Ibid.*

In 1996, when the Sacramento Bee studied 233 three strikes offenders in California, it found that they had an

aggregate of 1,165 prior felony convictions, an average of 5 apiece. See Furillo, Three Strikes—The Verdict's In: Most Offenders Have Long Criminal Histories, Sacramento Bee, Mar. 31, 1996, p. A1. The prior convictions included 322 robberies and 262 burglaries. *Ibid.* About 84 percent of the 233 three strikes offenders had been convicted of at least one violent crime. *Ibid.* In all, they were responsible for 17 homicides, 7 attempted slayings, and 91 sexual assaults and child molestations. *Ibid.* The Sacramento Bee concluded, based on its investigation, that "[i]n the vast majority of the cases, regardless of the third strike, the [three strikes] law is snaring [the] long-term habitual offenders with multiple felony convictions . . . ." *Ibid.*

The State's interest in deterring crime also lends some support to the three strikes law. We have long viewed both incapacitation and deterrence as rationales for recidivism statutes: "[A] recidivist statute['s] . . . primary goals are to deter repeat offenders and, at some point in the life of one who repeatedly commits criminal offenses serious enough to be punished as felonies, to segregate that person from the rest of society for an extended period of time." *Rummel, supra*, at 284. Four years after the passage of California's three strikes law, the recidivism rate of parolees returned to prison for the commission of a new crime dropped by nearly 25 percent. California Dept. of Justice, Office of the Attorney General, "Three Strikes and You're Out"—Its Impact on the California Criminal Justice System After Four Years 10 (1998). Even more dramatically:

> "[a]n unintended but positive consequence of 'Three Strikes' has been the impact on parolees leaving the state. More California parolees are now leaving the state than parolees from other jurisdictions entering California. This striking turnaround started in 1994. It was the first time more parolees left the state than

> entered since 1976. This trend has continued and in 1997 more than 1,000 net parolees left California." *Ibid.*

See also Janiskee & Erler, Crime, Punishment, and Romero: An Analysis of the Case Against California's Three Strikes Law, 39 Duquesne L. Rev. 43, 45–46 ("Prosecutors in Los Angeles routinely report that 'felons tell them they are moving out of the state because they fear getting a second or third strike for a nonviolent offense.'") (quoting Sanchez, A Movement Builds Against "Three Strikes" Law, Washington Post, Feb. 18, 2000, p. A3)).

To be sure, California's three strikes law has sparked controversy. Critics have doubted the law's wisdom, cost-efficiency, and effectiveness in reaching its goals. See, *e.g.,* Zimring, Hawkins, & Kamin, Punishment and Democracy: Three Strikes and You're Out in California (2001); Vitiello, Three Strikes: Can We Return to Rationality?, 87 J. Crim. L. & C. 395, 423 (1997). This criticism is appropriately directed at the legislature, which has primary responsibility for making the difficult policy choices that underlie any criminal sentencing scheme. We do not sit as a "superlegislature" to second-guess these policy choices. It is enough that the State of California has a reasonable basis for believing that dramatically enhanced sentences for habitual felons "advance[s] the goals of [its] criminal justice system in any substantial way." See *Solem*, 463 U. S., at 297, n. 22.

III

Against this backdrop, we consider Ewing's claim that his three strikes sentence of 25 years to life is unconstitutionally disproportionate to his offense of "shoplifting three golf clubs." Brief for Petitioner 6. We first address the gravity of the offense compared to the harshness of the penalty. At the threshold, we note that Ewing incorrectly frames the issue. The gravity of his offense was not

merely "shoplifting three golf clubs." Rather, Ewing was convicted of felony grand theft for stealing nearly $1,200 worth of merchandise after previously having been convicted of at least two "violent" or "serious" felonies. Even standing alone, Ewing's theft should not be taken lightly. His crime was certainly not "one of the most passive felonies a person could commit." *Solem*, *supra,* at 296 (internal quotation marks omitted). To the contrary, the Supreme Court of California has noted the "seriousness" of grand theft in the context of proportionality review. See *In re Lynch,* 8 Cal. 3d 410, 432, n. 20, 503 P. 2d 921, 936, n. 20 (1972). Theft of $1,200 in property is a felony under federal law, 18 U. S. C. §641, and in the vast majority of States. See App. B to Brief for Petitioner 21a.

That grand theft is a "wobbler" under California law is of no moment. Though California courts have discretion to reduce a felony grand theft charge to a misdemeanor, it remains a felony for all purposes "unless and until the trial court imposes a misdemeanor sentence." *In re Anderson*, 69 Cal. 2d 613, 626, 447 P. 2d 117, 152 (1968) (Tobriner, J., concurring); see generally 1 B. Witkin & N. Epstein, California Criminal Law §73 (3d ed. 2000). "The purpose of the trial judge's sentencing discretion" to downgrade certain felonies is to "impose a misdemeanor sentence in those cases in which the rehabilitation of the convicted defendant either does not require or would be adversely affected by, incarceration in a state prison as a felon." *Anderson*, *supra,* at 664–665, 447 P. 2d, at 152 (Tobriner, J., concurring). Under California law, the reduction is not based on the notion that a "wobbler" is "conceptually a misdemeanor." *Necochea* v. *Superior Court*, 23 Cal. App. 3d 1012, 1016, 100 Cal. Rptr. 693, 695 (1972). Rather, it is "intended to extend misdemeanant treatment to a potential felon." *Ibid.* In Ewing's case, however, the trial judge justifiably exercised her discretion not to extend such lenient treatment given Ewing's long

criminal history.

In weighing the gravity of Ewing's offense, we must place on the scales not only his current felony, but also his long history of felony recidivism. Any other approach would fail to accord proper deference to the policy judgments that find expression in the legislature's choice of sanctions. In imposing a three strikes sentence, the State's interest is not merely punishing the offense of conviction, or the "triggering" offense: "[I]t is in addition the interest . . . in dealing in a harsher manner with those who by repeated criminal acts have shown that they are simply incapable of conforming to the norms of society as established by its criminal law." See *Rummel*, 445 U. S., at 276; *Solem*, *supra,* at 296. To give full effect to the State's choice of this legitimate penological goal, our proportionality review of Ewing's sentence must take that goal into account.

Ewing's sentence is justified by the State's public-safety interest in incapacitating and deterring recidivist felons, and amply supported by his own long, serious criminal record.[2] Ewing has been convicted of numerous misdemeanor and felony offenses, served nine separate terms of incarceration, and committed most of his crimes while on

---

[2] JUSTICE BREYER argues that including Ewing's grand theft as a triggering offense cannot be justified on *"property-crime-related incapacitation grounds"* because such crimes do not count as prior strikes. *Post*, at 18. But the State's interest in dealing with repeat felons like Ewing is not so limited. As we have explained, the overarching objective of the three strikes law is to prevent serious or violent offenders like Ewing from repeating their criminal behavior. See Cal. Penal Code Ann. §667(b) (West 1999) ("It is the intent of the Legislature . . . to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of serious and/or violent felony offenses"). The California legislature therefore made a "deliberate policy decision . . . that the gravity of the new felony should not be a determinative factor in 'triggering' the application of the Three Strikes Law." Ardaiz 9. Neither the Eighth Amendment nor this Court's precedent forecloses that legislative choice.

probation or parole. His prior "strikes" were serious felonies including robbery and three residential burglaries. To be sure, Ewing's sentence is a long one. But it reflects a rational legislative judgment, entitled to deference, that offenders who have committed serious or violent felonies and who continue to commit felonies must be incapacitated. The State of California "was entitled to place upon [Ewing] the onus of one who is simply unable to bring his conduct within the social norms prescribed by the criminal law of the State." *Rummel*, *supra,* at 284. Ewing's is not "the rare case in which a threshold comparison of the crime committed and the sentence imposed leads to an inference of gross disproportionality." *Harmelin*, 501 U. S., at 1005 (KENNEDY, J., concurring in part and concurring in judgment).

We hold that Ewing's sentence of 25 years to life in prison, imposed for the offense of felony grand theft under the three strikes law, is not grossly disproportionate and therefore does not violate the Eighth Amendment's prohibition on cruel and unusual punishments. The judgment of the California Court of Appeal is affirmed.

It is so ordered.