

Lewd calls deemed protected

Supreme Court strikes down anti-obscenity law

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The Georgia Supreme Court on Tuesday ruled unconstitutional a state law that makes it a crime to carry on obscene and indecent conversations over the telephone.

In a unanimous opinion, the court threw out two misdemeanor convictions against Anthony McKenzie, a 17-year-old from Cumming who made a series of collect phone calls in 2003 from the Forsyth County Jail to a 14-year-old girl he met over the Internet.

The state law, enacted by the General Assembly almost 40 years ago, bans obscene, lewd, lascivious, filthy and indecent comments, suggestions and proposals made during telephone conversations.

In striking down the statute, the state Supreme Court called the law "an overbroad infringement on the First Amendment's guarantee of freedom of

speech."

The law fails to use the least restrictive means of curtailing such a right, the court said.

"Instead of applying only to obscene speech, it applies to speech that is merely indecent," Justice Robert Benham wrote for the court. "Instead of making illegal such speech only when directed at minors, it makes such speech illegal when heard by adults."

The law can be applied to speech that is unwelcome to the person on the other end of the phone line and also can be applied "to speech welcomed by the listener and spoken with intent to amuse," Benham wrote.

McKenzie was convicted of making two illegal phone calls to the 14-year-old girl in the summer of 2003 from within the jail, which tape-records all inmate phone calls.

McKenzie was sentenced to two years' probation and ordered to have no contact with any females under the age of 16 and to stay out of Internet chat rooms.

Forsyth Solicitor Leslie Abernathy, in a statement, noted that McKenzie had a prior conviction of a sex offense and maintained that the telephone calls violated state law.

"The First Amendment was crafted to protect the right to free speech," Abernathy said. "It was not, however, crafted to protect a convicted statutory rapist from using a government-owned telephone to call 14-year-old female victims to solicit and entice them to commit obscene sexual acts on the victim's parents' bed."

Parker McFarland, a Cumming lawyer who represents McKenzie, said the case was brought after the 14-year-old girl's mother got the phone

bills for the collect calls her daughter had accepted.

"The mother probably wasn't happy someone in jail was calling her daughter," McFarland said, adding that each of the calls lasted about 10 minutes.

They contained quite a bit of sexual discussions, including a few that were "somewhat graphic," the lawyer said.

"The state has the right to regulate offensive speech as it relates to minors," McFarland said. "The problem with this statute is that it covers adults as well."

"It applies to a husband and wife. I don't see what business the government has to regulate speech between consenting adults."

