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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RAUL OLVERA,

Defendant and Appellant.

B335430

(Los Angeles County
Super. Ct.
No. TA056822)

APPEAL from an order of the Superior Court of
Los Angeles County, John J. Lonergan, Jr., Judge. Affirmed.

William L. Heyman, under appointment by the Court of
Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief
Assistant Attorney General, Susan Sullivan Pithey, Assistant
Attorney General, David Madeo and Michael C. Keller, Deputy
Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Raul Olvera was 19 years old when he committed, among other crimes, special circumstance murder. In 2001, he was convicted and sentenced to a prison term of life without the possibility of parole (LWOP) plus 64 years.

Over 20 years later, in 2022, defendant filed a motion for an evidence preservation proceeding under *People v. Franklin* (2016) 63 Cal.4th 261 (*Franklin*) in anticipation of a future Penal Code section 3051¹ youth offender parole hearing. The trial court denied the motion, concluding that defendant was ineligible due to his LWOP sentence.

On appeal from the denial of his motion, defendant argues that section 3051's exclusion of young adult offenders sentenced to LWOP is unconstitutional.

We affirm.

BACKGROUND

*I. Facts*²

Between October 1999 and January 2000, defendant, along with Victor Cadena (Cadena) and Jose Aguilar (Aguilar), “committed a series of robberies of beauty salons, auto repair shops, taco stands, upholstery stores, tire stores, and restaurants. As well as robbing the establishments, [defendant, Cadena, and Aguilar] took money, clothing, boots, belts, jewelry, wallets, cash, and other personal items from employees and customers. [They] brandished guns during the robberies, threatened to kill victims,

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² These facts are drawn from our nonpublished opinion in defendant's direct appeal from his conviction.

pressed guns against the heads, bodies and necks of victims, and struck at least one victim. During the robbery of the last restaurant called Ofelia's, [defendant] shot Juan Saavedra, the owner of the restaurant, as Mr. Saavedra was obeying [defendant]'s command to get on the floor. Mr. Saavedra died of a gunshot wound to his head.” (*People v. Olvera* (Nov. 2, 2005, B154139) [nonpub. opn.] (*Olvera*).)

II. *Procedural History*

A. Conviction and sentencing

In 2001, a jury found defendant guilty of murder (§ 187, subd. (a)) and 11 counts of robbery (§ 211). (*Olvera, supra*, B154139.)³ The jury found true the special circumstance allegation that defendant committed the murder while engaged in the commission of a robbery (§ 190.2, subd. (a)(17)). (*Olvera, supra*, B154139.) As to each count, the jury found that a principal was armed (§ 12022.53, subds. (b), (c) & (d)) and that defendant personally used a firearm (§§ 12022.5, subd. (a)(1), 12022.53, subd. (b)). (*Olvera, supra*, B154139.) The trial court sentenced defendant to a prison term of LWOP plus 64 years. (*Olvera, supra*, B154139.)

We affirmed the judgment on direct appeal. (*Olvera, supra*, B154139.)

B. Motion for a *Franklin* proceeding

In September 2022, defendant filed a motion pursuant to section 1203.01, *Franklin, supra*, 63 Cal.4th 261, and *In re Cook* (2019) 7 Cal.5th 439 seeking an evidence preservation proceeding for use at a future section 3051 youth offender parole hearing. He argued that section 3051's exclusion of 18-to-25-year-olds

³ Cadena and Aguilar were charged and tried with defendant. Neither is a party to this appeal.

sentenced to LWOP violated the federal and state constitutional rights to equal protection and the state Constitution's proscription on cruel or unusual punishment.

On October 20, 2023, the trial court denied defendant's motion on the ground that he was ineligible for a *Franklin* proceeding as a matter of law because he had been sentenced to LWOP.

C. Appeal

This timely appeal ensued.

DISCUSSION

Defendant contends that section 3051's denial of a youth offender parole hearing to those who, like himself, were sentenced to LWOP for crimes committed when they were between 18 and 25 years old violates equal protection and constitutes cruel or unusual punishment. We review these constitutional challenges to section 3051 independently. (*People v. Jackson* (2021) 61 Cal.App.5th 189, 195 (*Jackson*); *People v. Sands* (2021) 70 Cal.App.5th 193, 202 (*Sands*).)

I. *Relevant Law*

Section 3051, "California's youth offender parole statute[,] offers opportunities for early release to certain persons who are incarcerated for crimes they committed at a young age." (*People v. Hardin* (2024) 15 Cal.5th 834, 838 (*Hardin*).) "Under the current version of the statute, most persons incarcerated for a crime committed between ages 18 and 25 are entitled to a parole hearing during the 15th, 20th, or 25th year of their incarceration. [Citation.] But not all youthful offenders are eligible for parole hearings. The statute excludes, among others, offenders who are serving sentences of [LWOP] for a crime committed after the age of 18. [Citation.]" (*Id.* at pp. 838–839; see also § 3051, subd. (h)

[“This section shall not apply . . . to cases in which an individual is sentenced to [LWOP] for a controlling offense that was committed after the person had attained 18 years of age”].)

Individuals eligible for a youth offender parole hearing are entitled to a *Franklin* proceeding, which provides “an opportunity to make a record of youth-related mitigating evidence relevant to a future parole hearing.” (*People v. Mason* (2024) 105 Cal.App.5th 411, 414 (*Mason*).) It follows that offenders who are statutorily *ineligible* for a section 3051 youth offender parole hearing are not entitled to a *Franklin* proceeding. (See *Mason*, *supra*, at pp. 413–414; *Sands*, *supra*, 70 Cal.App.5th at p. 197.)

II. *Analysis*

A. Equal protection

Both the federal and state Constitutions guarantee the equal protection of the law to all persons. (U.S. Const., 14th Amend.; Cal. Const., art. I, § 7.) Where, as here, “the law challenged neither draws a suspect classification nor burdens fundamental rights,” equal protection is denied “only if there is no *rational* relationship between a disparity in treatment and some legitimate government purpose. [Citation.]” (*People v. Chatman* (2018) 4 Cal.5th 277, 288–289; accord *Hardin*, *supra*, 15 Cal.5th at pp. 847–848.)

Defendant raises two equal protection challenges.

First, defendant argues that section 3051 violates equal protection by treating young adult offenders (aged 18 to 25 years when the crime was committed) sentenced to LWOP differently from young adult offenders convicted of murder and serving parole-eligible sentences, because there is no rational basis for such disparate treatment. The California Supreme Court expressly rejected this argument in *Hardin*, *supra*, 15 Cal.5th at

page 839, observing that “special circumstance murder is a uniquely serious offense” and that “the Legislature could rationally balance the seriousness of the offender’s crimes against the capacity of all young adults for growth, and determine that young adults who have committed certain very serious crimes should remain ineligible for release from prison.” As defendant concedes, we are bound by this precedent (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455) and therefore must reject his claim.

Second, defendant contends that there is no rational basis to provide a section 3051 parole hearing to juvenile offenders sentenced to LWOP while denying that opportunity to young adult offenders sentenced to LWOP.

We disagree. “[C]hildren are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform, . . . ‘they are less deserving of the most severe punishments.’ [Citation.]” (*Miller v. Alabama* (2012) 567 U.S. 460, 471; see also *Roper v. Simmons* (2005) 543 U.S. 551, 574 [“The age of 18 is the point where society draws the line for many purposes between childhood and adulthood”].) Accordingly, section 3051 does not violate equal protection; “[t]he Legislature had a rational basis to distinguish between offenders with the same sentence (life without parole) based on their age.” (*Sands, supra*, 70 Cal.App.5th at p. 204; accord *In re Murray* (2021) 68 Cal.App.5th 456, 463–464; *Jackson, supra*, 61 Cal.App.5th at pp. 196–197; *People v. Acosta* (2021) 60 Cal.App.5th 769, 779–780; *People v. Morales* (2021) 67 Cal.App.5th 326, 347.)

B. Cruel or unusual punishment

The United States Constitution prohibits “cruel and unusual punishments.” (U.S. Const., 8th Amend.) Arguably greater protection is afforded by the California Constitution, which prohibits “[c]ruel or unusual punishment.” (Cal. Const., art. I, § 17, italics added; see also *People v. Haller* (2009) 174 Cal.App.4th 1080, 1092.) “Under the California Constitution, a sentence may violate the prohibition against cruel or unusual punishment if “it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity.” [Citations.]” (*People v. Guenther* (2024) 104 Cal.App.5th 483, 532.) “There is considerable overlap in the state and federal approaches” to cruel and/or unusual punishment; “[a]lthough articulated slightly differently, both standards prohibit punishment that is “grossly disproportionate” to the crime or the individual culpability of the defendant.’ [Citation.]” (*People v. Baker* (2018) 20 Cal.App.5th 711, 733 (*Baker*).)

Defendant contends that section 3051’s exclusion of young adult offenders sentenced to LWOP renders his sentence cruel or unusual punishment under the California Constitution.⁴ He argues that section 3051 evidences a recognition by the Legislature that young adult offenders “are less culpable than those who committed . . . offenses after they turned 26” and that “LWOP sentences, without any hope for a parole hearing and possible parole at some point,” are “grossly disproportionate to the offenses” committed by young adult offenders.

⁴ Defendant does not claim that section 3051 violates the federal Constitution’s ban on cruel and unusual punishment.

We are unpersuaded. In *People v. Flores* (2020) 9 Cal.5th 371, 429 (*Flores*), the California Supreme Court held that sentencing individuals who were between 18 and 21 years old at the time of their crimes to death does not violate the Eighth Amendment’s proscription of cruel and unusual punishment. *Flores* was decided on federal constitutional grounds (*Flores, supra*, at pp. 429–430), but defendant offers no persuasive reason why its reasoning does not apply equally to claims under the California Constitution. (See *Baker, supra*, 20 Cal.App.5th at p. 733; *People v. Mendez* (2010) 188 Cal.App.4th 47, 64–65.) If a death sentence for young adults is not disproportionate, it cannot be said that the less severe punishment of LWOP is disproportionate. (See *In re Williams* (2020) 57 Cal.App.5th 427, 439 [“If the Eighth Amendment does not prohibit a sentence of death for 21 year olds, then most assuredly, it does not prohibit the lesser LWOP sentence”].)

DISPOSITION

The trial court's October 20, 2023, order is affirmed.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ