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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

SAUL LIMA,

Defendant and Appellant.

2d Crim. No. B340646
(Super. Ct. No. TA038445)
(Los Angeles County)

In 1998, Saul Lima was convicted by jury of special circumstance murder committed when he was 19 years old. He was sentenced to life without the possibility of parole (LWOP). In 2023, he moved, pursuant to Penal Code,¹ section 1203.01, for a “*Franklin/Hardin*”² proceeding seeking to preserve evidence for a future youth offender parole hearing pursuant to section 3051.

¹ All further statutory references are to the Penal Code.

² *People v. Franklin* (2016) 63 Cal.4th 261 and *People v. Hardin* (2024) 15 Cal.5th 834 (*Hardin*).

The trial court dismissed the motion, finding appellant was statutorily ineligible for relief because he was sentenced to LWOP. Appellant contends this was error and argues section 3051's denial of relief to young offenders sentenced to LWOP violates equal protection and constitutes cruel or unusual punishment. We affirm.

*Facts and Procedural Background*³

In 1996, appellant, who was a member of the Gardena Trece gang, was sitting in the passenger seat of his friend's car when they pulled up next to another car stopped at a traffic light. Appellant asked the driver of the other car, Elias Osuna, "Where are you from?" Osuna answered, "Nowhere," but his passenger, Alberto Garcia said, "Lynwood Dukes." Appellant removed the mask he was wearing, raised a .22 caliber handgun, shouted "Gardena," and fired a single shot that hit Osuna in the left temple, killing him.

A jury convicted appellant of first degree murder (§§ 187, subd. (a), 189, count 1) and found true the special circumstance allegation that he intentionally discharged a firearm from a motor vehicle with the intent to inflict death (§ 190.2, subd. (a)(21)). The jury further found true the allegation that in the commission and attempted commission of the offense, appellant personally used a firearm. (§ 12022.5, subd. (a).)

In 1999, appellant was sentenced to LWOP on count 1 plus four years for the firearm enhancement. We affirmed his conviction in an unpublished opinion. (*Lima, supra*, B130986.)

³ We summarize these facts from our prior unpublished opinion. (*People v. Lima* (May 16, 2000, B130986) [nonpub. opn.] (*Lima*).)

Motion for a Franklin Proceeding

In 2023, appellant filed a motion in propria persona requesting a proceeding to preserve evidence for a possible youth offender parole hearing. In his motion, appellant acknowledged that section 3051 excluded 18- to 25- year-olds sentenced to LWOP from youth offender parole consideration but argued the exclusion violated equal protection and the state constitutional ban on cruel or unusual punishment. The trial court appointed counsel and set the matter for a hearing on the motion.

At the hearing, the prosecutor argued appellant was not entitled to a *Franklin* proceeding based on our Supreme Court's recent decision in *Hardin, supra*, 15 Cal.5th 834. The trial court agreed with the prosecution and dismissed the motion. The trial court made no mention of appellant's "cruel or unusual punishment" contention raised in his motion.

Discussion

"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. [Citations.] . . . 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 life in prison without the possibility of parole for a crime committed after the age of 18. ([§ 3051,] subd. (h).)" (*Hardin, supra*, 15 Cal.5th at pp. 838-839.)

Because appellant was 19 years old when he committed the offense in this case and was sentenced to LWOP, he is ineligible for section 3051 relief based on the plain terms of the

statute. Appellant contends this statutory bar violates equal protection and constitutes cruel or unusual punishment. We review these constitutional challenges de novo. (*California Grocers Assn. v. City of Los Angeles* (2011) 52 Cal.4th 177, 208; *People v. Ramos* (1997) 15 Cal.4th 1133, 1154.)

Appellant raises two equal protection violation contentions.

First, appellant contends there is no rational basis for treating young adult offenders sentenced to LWOP differently in terms of being entitled to a parole hearing at some point than someone who committed murder before the age of 26 and received a non-LWOP sentence. Our Supreme Court rejected this argument in *Hardin*, reasoning that our Legislature could rationally “assign[] significance to the nature of the underlying offenses and accompanying sentences.” (*Hardin, supra*, 15 Cal.5th at pp. 839, 852-855.) We are bound by this decision. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

Second, appellant contends there is no rational basis to distinguish between young adult offenders sentenced to LWOP and juvenile offenders sentenced to LWOP. But California appellate courts have concluded that the Legislature had a rational basis to distinguish between offenders with the same sentence based on their age. (E.g., *People v. Sands* (2021) 70 Cal.App.5th 193, 204; *In re Murray* (2021) 68 Cal.App.5th 456, 463-464; *People v. Morales* (2021) 67 Cal.App.5th 326, 347; *People v. Jackson* (2021) 61 Cal.App.5th 189, 196-197; *People v. Acosta* (2021) 60 Cal.App.5th 769, 779-780; accord, *Miller v. Alabama* (2012) 567 U.S. 460, 471 [“children are constitutionally different from adults for purposes of sentencing”]; *Roper v. Simmons*

(2005) 543 U.S. 551, 574 “[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood”].) We reach the same conclusion here.

Appellant contends that excluding young adult offenders sentenced to LWOP from youth offender parole hearings violates the ban on cruel or unusual punishment under the California Constitution. In making this contention, he appears to acknowledge that his sentence was neither cruel nor unusual punishment when it was imposed. Rather, he contends it became so after the Legislature amended section 3051 to provide certain juvenile offenders with parole hearings.

The Eighth Amendment to the federal Constitution prohibits “cruel and unusual punishment.” (U.S. Const., 8th Amend.) The California Constitution affords somewhat greater protection to criminal defendants by prohibiting “[c]ruel *or* unusual punishment.” (Cal. Const., art. I, § 17, italics added; see *People v. Haller* (2009) 174 Cal.App.4th 1080, 1092.) “There is considerable overlap in the state and federal approaches. ‘Although articulated slightly differently, both standards prohibit punishment that is “grossly disproportionate” to the crime or the individual culpability of the defendant.’ [Citation.] ‘The touchstone in each is gross disproportionality.’ [Citation.]” (*People v. Baker* (2018) 20 Cal.App.5th 711, 733.)

Applying this disproportionality principle, our Supreme Court held in *People v. Flores* (2020) 9 Cal.5th 371, that the death penalty for young adult offenders (age 18 to 21) who committed homicide was not unconstitutionally disproportionate. (*Id.*, at p. 429.) If a death sentence for young adults in this age range is not disproportionate, then a lesser sentence of LWOP for young adults in the same age range is not. (Accord, *In re Williams*

(2020) 57 Cal.App.5th 427, 439; *People v. Argeta* (2012) 210 Cal.App.4th 1478, 1482 [rejecting claim that a functional LWOP sentence for an 18-year old-offender is cruel and/or unusual punishment].)

In his reply brief, appellant contends that many of the cases cited by the Attorney General on this point focus on the federal, Eighth Amendment standard rather than California's standard, but both standards turn on proportionality. There is no basis for interpreting proportionality differently in the context of this case.

Disposition

The trial court's order (dismissing appellant's motion for a youth offender parole hearing) is affirmed.

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YEGAN, J.

We concur:

GILBERT, P. J.

CODY, J.

Tammy Chung Ryu, Judge
Superior Court County of Los Angeles

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

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