Filed 7/24/25 P. v. Saucedo CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. DANIEL ASCENCIO SAUCEDO, Defendant and Appellant.	B337745 (Los Angeles County Super. Ct. No. KA083334)

APPEAL from an order of the Superior Court of Los Angeles County, Jacqueline Lewis, 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, Michael C. Keller and John Yang, Deputy Attorneys General for Plaintiff and Respondent.

Defendant Daniel Ascencio Saucedo appeals from an order denying his motion for a *Franklin*[1] proceeding. He contends that Penal Code[2] section 3501, which makes him ineligible for a youthful offender parole hearing because of his age at the time of his offense and his receipt of a life without the possibility of parole (LWOP) sentence, violates his constitutional rights to equal protection. He also contends his sentence violates California's constitutional prohibition against cruel or unusual punishment. We reject these arguments and affirm.

FACTUAL SUMMARY AND PROCEDURAL HISTORY

In March 2008, defendant, then 22 years old, drove a fellow gang member, Salvador Marquez, to a location for a planned drive-by shooting against rival gang members. Marquez fired several shots at a group congregated in a driveway and killed Kevin Castillo.

In 2009, a jury convicted defendant of first degree murder (§ 187, subd. (a); count 1) and three counts of willful, deliberate, and premeditated attempted murder (§§ 187, subd. (a), 664; counts 2, 3, & 4). The jury found true firearm enhancement allegations of personal use and use by a principal (§ 12022.53, subds. (b), (c), (d), & (e)(1))[3] and an allegation that each crime

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[1] *People v. Franklin* (2016) 63 Cal.4th 261.

[2] Unspecified statutory references are to the Penal Code.

[3] The People acknowledged in their sentencing memorandum that personal use firearm allegations were not alleged against defendant but were included erroneously on the verdict form. The People requested that those allegations be stricken.

was committed for the benefit of a street gang (§ 186.22, subd. (b)(1)(C)). The jury also found true a special circumstance allegation that "[t]he murder was intentional and perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person or persons outside the vehicle with the intent to inflict death." (§ 190.2, subd. (a)(21).) To find this special circumstance true, the jury must have found that defendant, a person who was not the actual killer, acting "with the intent to kill, aid[ed and] abet[ted] . . . the commission of murder in the first degree."[4] (§ 190.2, subd. (c).)

The court sentenced defendant to LWOP on the special circumstances murder conviction (count 1), three sentences of life with the possibility of parole to run consecutively to count 1 for the attempted murder counts (counts 2-4), plus, for each count, 25 years to life for the firearm enhancement under section 12022.53, subdivisions (d) and (e)(1). The court's minute order indicates the court struck the personal use allegations as to defendant under section 12022.53, subdivisions (b), (c), and (e)(1) as well as the allegation pursuant to section 186.22, subdivision (b)(1). However, the abstract of judgment did not accurately reflect the court's ruling as to the enhancements. In November 2010, we affirmed the judgment with directions to correct the abstract of judgment and to impose and stay the firearm enhancements for use by a principal under section 12022.53,

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[4] Major participant and reckless indifference findings are inapplicable to section 190.2, subdivision (a)(21). (See § 190, subd. (d).)

subdivisions (b), (c), and (e). (*People v. Sausedo* (Nov. 17, 2010, B218982) [nonpub. opn.].)[5]

On September 21, 2022, defendant filed a section 1172.6 petition for resentencing, which the trial court denied at the prima facie stage. We affirmed that denial, holding the jury instructions did not suggest a possibility that the jury imputed malice to defendant. (*People v. Saucedo* (Nov. 19, 2024, B335089) [nonpub. opn.].) Rather, the lack of instructions on felony murder or the natural and probable consequences doctrine, in conjunction with the jury's special circumstance true finding and the attempted murder convictions, demonstrated that the jury found defendant harbored express malice. (*Ibid.*)

On December 5, 2022, defendant filed a motion under section 1203.01 and *In re Cook* (2019) 7 Cal.5th 439, 451 for a *Franklin* proceeding to preserve mitigating evidence for use in a future youthful offender parole hearing. Defendant also requested the appointment of counsel. Although youthful offender parole hearings are statutorily unavailable to persons sentenced to LWOP who were 18 years or older at the time they committed their crimes (§ 3051, subd. (b)(4)), defendant argued that he is entitled to such a parole hearing and a *Franklin* proceeding based on federal and state constitutional equal protection guarantees. He further argued the exclusion of LWOP defendants aged 18 years or older from youthful offender parole hearings violated California's constitutional prohibition against cruel or unusual punishment.

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[5] The direct appeal opinion refers to defendant by a different spelling of "Sausedo."

The court appointed counsel for defendant and, pursuant to defense counsel's request, Evidence Code section 730 experts in psychology and social work.

On September 5, 2023, the court granted defendant's request for a *Franklin* proceeding and scheduled a status conference for the matter.

On March 4, 2024, the Supreme Court issued *People v. Hardin* (2024) 15 Cal.5th 834 (*Hardin*), holding the Legislature's decision not to offer youthful offender parole to persons incarcerated for crimes committed after the age of 18 and serving an LWOP sentence based on a conviction for special circumstance first degree murder did not violate equal protection principles. (*Id.* at p. 864.)

At the next scheduled hearing in the matter, on April 25, 2024, defendant's counsel represented to the court, "This is also a *Hardin* situation. Defendant has LWOP." The court responded, "Based on the *People v. Hardin* decision coming out from the Supreme Court, [the] *Franklin* hearing is denied as Mr. Saucedo has an LWOP sentence."

Defendant timely appealed.

DISCUSSION

A. Youthful Offender Parole Hearings and Equal Protection

Under section 3051, a person who commits a crime when he or she is under 18 years of age and is sentenced for that crime to LWOP is entitled to a parole hearing and eligible for release on parole after 25 years of incarceration. (*Id.*, subd. (b)(4).) In *Franklin*, our state Supreme Court established that defendants who are entitled to receive a youthful offender parole hearing in the future have the right to make a record of information that

may be relevant to that future parole hearing. (*People v. Franklin, supra*, 63 Cal.4th at p. 284.) Courts refer to this information-preserving opportunity as a "*Franklin* hearing" (*People v. Mason* (2024) 105 Cal.App.5th 411, 414) or "*Franklin* proceeding." (*In re Cook*, *supra*, 7 Cal.5th at p. 450.)[6] An incarcerated person whose judgment "is otherwise final" may file a motion under section 1203.01 for a *Franklin* proceeding if the person is "entitled" to a youthful offender parole hearing. (*In re Cook*, *supra*, at pp. 451, 458.)

The Legislature has determined that "an individual . . . sentenced to [LWOP] for a controlling offense that was committed after the person had attained 18 years of age" is not entitled to a youthful offender parole hearing. (§ 3051, subd. (h); see *Hardin*, *supra*, 15 Cal.5th at p. 839.) The controlling offense in this case is murder, for which defendant was sentenced to LWOP. (See § 3051, subd. (a)(2)(B).) Defendant committed the controlling offense when he was 22 years old. He is thus statutorily ineligible for a youthful offender parole hearing and, accordingly, not entitled to a *Franklin* proceeding to preserve evidence for such a hearing.

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[6] In *Cook*, our Supreme Court explained that "*Franklin* processes are more properly called 'proceedings' rather than 'hearings.' A hearing generally involves definitive issues of law or fact to be determined with a decision rendered based on that determination. [Citations.] A proceeding is a broader term describing the form or manner of conducting judicial business before a court. [Citations.] While a judicial officer presides over a *Franklin* proceeding and regulates its conduct, the officer is not called upon to make findings of fact or render any final determination at the proceeding's conclusion." (*In re Cook*, *supra*, 7 Cal.5th at pp. 449-450, fn. 3.)

Defendant contends that denying these procedures to him deprives him of equal protection of the laws under the federal and state Constitutions because, as a young adult sentenced to LWOP, he is treated differently than juvenile offenders sentenced to LWOP. We disagree.

When, as here, a defendant challenges a law that distinguishes between identifiable groups or classes of persons on the basis that the distinctions are inconsistent with equal protection, the "pertinent inquiry is whether the challenged difference in treatment is adequately justified under the applicable standard of review. The burden is on the party challenging the law to show that it is not." (*Hardin*, *supra*, 15 Cal.5th at pp. 850-851.) Defendant and the Attorney General agree that the applicable standard for evaluating defendant's equal protection challenge is whether there is a rational basis for the Legislature's disparate treatment of individuals serving LWOP sentences who, like defendant, committed their crimes when they were adults and those who committed their crimes as juveniles. (Cf. *Hardin*, *supra*, 15 Cal.5th at p. 851.) This standard "sets a high bar before a law is deemed to lack even the minimal rationality necessary for it to survive constitutional scrutiny." (*People v. Chatman* (2018) 4 Cal.5th 277, 289.)

The Courts of Appeal to consider this issue have unanimously concluded the disparate treatment defendant claims does not violate equal protection principles. In *People v. Sands* (2021) 70 Cal.App.5th 193, the court explained that "[t]he Legislature had a rational basis to distinguish between offenders with [LWOP sentences] based on their age. For juvenile offenders, such a sentence may violate the Eighth Amendment. [Citations.] But the same sentence does not violate the Eighth

Amendment when imposed on an adult, even an adult under the age of 26." (*Id.* at p. 204.) The *Sands* court thus "agree[d] with the other courts of appeal that the Legislature could rationally decide to remedy unconstitutional sentences but go no further." (*Ibid.*; accord, *People v. Mason*, *supra*, 105 Cal.App.5th at p. 415; *In re Murray* (2021) 68 Cal.App.5th 456, 464; *People v. Morales* (2021) 67 Cal.App.5th 326, 347; *People v. Acosta* (2021) 60 Cal.App.5th 769, 779-780.) We agree with these authorities and note that defendant does not cite any controlling contrary authority.

Defendant contends that the cited cases are wrongly decided and that considerations that have shaped the Supreme Court's Eighth Amendment jurisprudence concerning the punishment of juveniles—such as the juvenile defendant's lack of maturity, undeveloped sense of responsibility, susceptibility to negative influences and outside pressures, and underdeveloped character (see, e.g., *Miller v. Alabama* (2012) 567 U.S. 460, 469-472 [132 S.Ct. 2455, 183 L.Ed.2d 407]; *Graham v. Florida* (2010) 560 U.S. 48, 68-69 [130 S.Ct. 2011, 176 L.Ed.2d 825]; *Roper v. Simmons* (2005) 543 U.S. 551, 569-570 [125 S.Ct. 1183, 161 L.Ed.2d 1]; *People v. Caballero* (2012) 55 Cal.4th 262, 268)—"should apply to [defendant], even though he was 22 years old" when he committed his crimes. State and federal courts, however, have determined that 18 years of age—"the point where society draws the line for many purposes between childhood and adulthood"—is the point where the Eighth Amendment compels different treatment of youth for the most severe sentences. (*Roper v. Simmons*, *supra*, at p. 574; accord, *People v. Gamache* (2010) 48 Cal.4th 347, 405 [the United States Supreme Court has drawn a "line, prohibiting the death penalty for those younger

than 18 years of age, but not for those 18 years of age and older"].) This is a line the Legislature adopted in enacting section 3051 to address and render moot Eighth Amendment challenges to lengthy juvenile sentences. (*Hardin*, *supra*, 15 Cal.5th at p. 845; *People v. Franklin*, *supra*, 63 Cal.4th at pp. 276-277.) As the *Sands* court concluded, in doing so "the Legislature could rationally decide to remedy unconstitutional sentences but go no further." (*People v. Sands*, *supra*, 70 Cal.App.5th at p. 204.) Because the disparate treatment of which defendant complains is supported by a rational basis, the defendant's equal protection argument fails.[7]

B. Cruel or Unusual Punishment

Defendant contends that his LWOP sentence violates our state constitutional prohibition against "[c]ruel or unusual punishment." (Cal. Const., art. I, § 17.)[8]

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[7] Defendant also asserts that section 3051 deprives him of equal protection because, as a young adult sentenced to LWOP, he is treated differently than young adults not sentenced to LWOP. He concedes, however, that our Supreme Court recently rejected this argument in *Hardin*, and that we are bound to follow it under *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455. Nevertheless, defendant raises the issue to preserve it "for purposes of eventual further review in the federal courts." We agree that we are bound to follow *Hardin* and therefore reject his additional argument.

[8] Although defendant discusses cases arising from the United States Constitution's Eighth Amendment guaranty against cruel and unusual punishment in connection with his equal protection argument, his separate argument that his sentence constitutes cruel or unusual punishment relies solely on the California Constitution's provision.

Defendant does not explain how his contention would have been relevant to the trial court's consideration of his motion for a *Franklin* proceeding or cognizable in this postconviction appeal from the denial of such a motion. Even if the argument is properly before us, it is without merit. Punishment may violate the California Constitution 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." (*In re Lynch* (1972) 8 Cal.3d 410, 424, fn. omitted.) Under *Lynch*, a court may determine that a sentence is cruel or unusual under three "techniques": (1) by examining "the nature of the offense and/or the offender, with particular regard to the degree of danger both present to society" (*id.* at p. 425); (2) by "compar[ing] the challenged penalty with the punishments prescribed in the *same jurisdiction* for *different offenses* which, by the same test, must be deemed more serious" (*id.* at p. 426); and (3) by comparing "the challenged penalty with the punishments prescribed for the same offense in other jurisdictions" (*id.* at p. 436).

Defendant concedes that his sentence "may not meet the three-part test set forth in" *Lynch*, and he does not assert any argument that it does. Indeed, an LWOP sentence imposed on a 22-year-old for aiding and abetting murder with the intent to kill and with a special circumstance does not shock the conscience or offend fundamental notions of human dignity. The United States Supreme Court has long recognized a state's prerogative to "make aiders and abettors equally responsible, as a matter of law, with principals" and, thus, to hold a nonkiller liable for first degree murder. (*Lockett v. Ohio* (1978) 438 U.S. 586, 602 [98 S.Ct. 2954, 57 L.Ed.2d 973].) Defendant makes no reasoned argument that

prohibitions against cruel or unusual punishment dictate that he should be treated differently than the actual killer.

Instead, defendant contends that the Legislature, in enacting section 3051, has rendered his LWOP sentence cruel or unusual by recognizing "the reduced culpability of offenders who commit their offenses in question before they become 26 years old and . . . for giving some such offenders youth offender parole hearings at some point." That is, although his sentence was constitutional when imposed, it has become unconstitutional because the Legislature has since provided juvenile offenders and young adults sentenced to terms other than LWOP, but not him, with youthful offender parole hearings. Defendant does not support the point with apposite authority and acknowledges that there is contrary authority, citing *People v. Argeta* (2012) 210 Cal.App.4th 1478, 1482 [rejecting argument that sentence was "categorically cruel and/or unusual" because the defendant was just "five months after [his] 18th birthday"].) Defendant suggests, however, that *Argeta* is not persuasive because it was decided before the enactment of section 3051. Numerous recent appellate decisions, however, have upheld LWOP sentences for young adults since the enactment of section 3051. (See *People v. Ellis* (2024) 105 Cal.App.5th 536, 551 ["de facto LWOP sentence imposed on a young adult offender"]; *In re Williams* (2020) 57 Cal.App.5th 427, 438-439 [LWOP sentence for a 21-year-old]; *People v. Montelongo* (2020) 55 Cal.App.5th 1016, 1032 [LWOP sentence for an18-year-old]; *People v. Edwards* (2019) 34 Cal.App.5th 183, 190 [19-year-olds sentenced to de facto LWOP terms], disapproved on other grounds in *People v. Williams* (2024) 17 Cal.5th 99, 137, fn. 12; *People v. Perez* (2016) 3 Cal.App.5th 612, 617 [rejecting a 20-year-old defendant's argument that his

de facto LWOP sentence was unconstitutional]; cf. also *People v. Flores* (2020) 9 Cal.5th 371, 429-430 [death penalty for defendants older than 18 years old is not unconstitutional].)

In his reply brief, defendant attempts to distinguish some of the cases cited above on the ground that they addressed arguments under the Eighth Amendment to the federal Constitution, which is concerned with "cruel and unusual punishments," not the disjunctive "[c]ruel or unusual punishment" provision in our state Constitution. (Compare U.S. Const., 8th Amend. with Cal. Const., art. I, § 17.) He does not, however, explain why courts should reach a different conclusion under our state Constitution; and, as noted above, he does not attempt to apply the *Lynch* techniques for analyzing violations of our state's constitutional provision.

For the foregoing reasons, we reject defendant's argument that his sentence violates California's prohibition against cruel or unusual punishment.

DISPOSITION

The order denying defendant's motion for a *Franklin* proceeding is affirmed.

NOT TO BE PUBLISHED

WEINGART, J.

We concur:

BENDIX, Acting P. J.

M. KIM, J.