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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD BHIMJI,

Defendant and Appellant.

B338650

(Los Angeles County
Super. Ct. No. TA056856)

APPEAL from an order of the Superior Court of Los Angeles County, Sean D. Coen, Judge. Affirmed.

Michael H. Casey, 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, Senior Assistant Attorney General, Idan Ivri, Supervising Deputy Attorney General, and Nikhil Cooper, Deputy Attorney General, for Plaintiff and Respondent.

Defendant Richard Bhimji was sentenced to a prison term of 40 years to life for a murder he committed when he was 17 years old. Bhimji petitioned for recall and resentencing pursuant to Penal Code section 1170, subdivision (d)(1) (section 1170(d)(1)).¹ The trial court denied his petition, finding he was ineligible for relief because he was not sentenced to the functional equivalent of life without the possibility of parole (LWOP). Bhimji contends the court erred and the denial of his petition violated his constitutional right to equal protection of the law. We affirm.

PROCEDURAL BACKGROUND

In 2001, a jury convicted Bhimji of the second degree murder of Jose Flamenco. (§ 187, subd. (a).) The jury also found that Bhimji personally and intentionally discharged a firearm, causing great bodily injury and death (§ 12022.53, subd. (d)), and personally used an assault weapon. (§ 12022.5, subd. (b).) Bhimji was sentenced to a total term of 40 years to life.

In January 2024, Bhimji filed a petition for recall and resentencing under section 1170(d)(1). In relevant part, he argued he was eligible for relief because he was serving a “*de facto* LWOP” sentence. The People opposed the request.

The trial court denied the petition. The court found Bhimji was not eligible for relief under section 1170(d)(1) because he “was not sentenced to equivalent of [LWOP] as per case law would suggest as well as the fact that as stated by the People he’s

¹ All further statutory references are to the Penal Code.

already had a parole hearing or he’s up for parole in this matter.”² (*Sic.*) Bhimji appealed.

DISCUSSION

A. Legal Principles and Standard of Review

Section 1170(d)(1)(A) allows “a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for [LWOP]” and who “has been incarcerated for at least 15 years” to petition the sentencing court for recall and resentencing. By its terms, section 1170(d)(1) “limits eligibility to petition for recall and resentencing to juvenile offenders sentenced to an explicitly designated [LWOP] term.” (*People v. Heard* (2022) 83 Cal.App.5th 608, 626 (*Heard*).)

However, *Heard*, and more recently *People v. Sorto* (2024) 104 Cal.App.5th 435 (*Sorto*), held that juvenile offenders sentenced to functionally equivalent LWOP terms are also entitled to section 1170(d) relief under the constitutional guarantee of equal protection. (*Heard, supra*, 83 Cal.App.5th at p. 612; *Sorto*, at p. 454.)³ In *Heard*, the juvenile defendant was

² The People state Bhimji had a youthful offender parole hearing in May 2024 and has his next parole hearing set for May 2027.

³ *Heard* and *Sorto* also held that a juvenile offender’s parole eligibility under section 3051 did not render an offender ineligible for relief under section 1170(d). (*Heard, supra*, 83 Cal.App.5th at p. 629; *Sorto, supra*, 104 Cal.App.5th at p. 454; but see *People v. Ortega* (2025) 111 Cal.App.5th 1252, 1260 [“The requirement of a youth offender parole hearing moots a juvenile defendant’s constitutional claim that he is serving a sentence that is the functional equivalent of LWOP”].) Parole eligibility under section 3051 does not affect our analysis in this case.

sentenced to 103 years to life (*Heard*, at p. 612), and in *Sorto*, the juvenile defendant was sentenced to 140 years to life (*Sorto*, at p. 440). Courts have made clear, however, that not all lengthy sentences are equivalent to LWOP. For example, cases have held that sentences of 30 or more years to life are not the functional equivalent of LWOP. (See e.g., *People v. Olmos* (2025) 109 Cal.App.5th 580, 583 [33 years to life]; *People v. Perez* (2013) 214 Cal.App.4th 49, 58 [30 years to life, “by no stretch of the imagination,” can be called de facto LWOP].)

We review questions of law and the application of law to undisputed facts de novo. (*People v. Ashford University, LLC* (2024) 100 Cal.App.5th 485, 518.)

B. Bhimji’s Sentence is Not Functionally Equivalent to LWOP

Bhimji asserts he will not become eligible for parole based upon his original sentence until he has served 40 years in prison and is 58 years old. He argues the trial court erred in finding his sentence is not the functional equivalent of LWOP because his sentence and parole eligibility date do not give him a meaningful opportunity to reintegrate into society. The People contend the court correctly concluded that Bhimji’s sentence is not the functional equivalent of LWOP and thus he is not entitled to section 1170(d) relief. We agree with the People.

Bhimji cites no California case holding that a sentence of 40 years to life for a juvenile offender is the functional equivalent of LWOP. Even disregarding other avenues for earlier release (e.g., §§ 3051, 3055), Bhimji will have the opportunity to be released on parole by age 58. His sentence of 40 years to life is distinguishable from the 103 years to life and 140 years to life

sentences imposed on the juveniles in *Heard* and *Sorto*.⁴ Bhimji does not demonstrate that he would not have an opportunity to reintegrate into society as a productive and respected citizen. (See *Contreras*, *supra*, 4 Cal.5th at p. 368.)

Bhimji asserts we should consider the possibility that he might not ultimately receive a grant of parole. He does not show this is relevant to determining whether his sentence is the functional equivalent of one with no possibility of parole for purposes of an equal protection challenge to section 1170(d)(1). Nor does Bhimji show it is appropriate to speculate about whether his past and future conduct will make him a good candidate for parole or what actions the parole board may take.

Additionally, Bhimji asserts we should consider statistical studies of inmates' life expectancies in considering whether 40 years to life is the functional equivalent of LWOP. However, the internet links to which he directs us were not presented to or deemed admissible by the trial court. Further, in the Eighth Amendment context, our Supreme Court has noted that such an "actuarial approach gives rise to a tangle of legal and empirical difficulties" and declined to adopt a "constitutional rule that employs a concept of life expectancy" because of problems with that approach. (*Contreras*, *supra*, 4 Cal.5th at pp. 361–364.)

⁴ Our Supreme Court in *People v. Contreras* (2018) 4 Cal.5th 349 (*Contreras*), a case cited by Bhimji, held that sentences of 50 and 58 years to life were the functional equivalent of LWOP and violated the Eighth Amendment. (*Id.* at pp. 368–369.) The defendants in *Contreras* faced potential release from prison in their late sixties and into their seventies. (*Id.* at p. 368.) We note Bhimji's sentence is shorter than the sentences imposed on the juveniles in *Contreras*, and he will be eligible for release on parole roughly a decade earlier.

We conclude Bhimji’s 40 years to life sentence is not the functional equivalent of LWOP. There is a rational basis for treating his sentence differently from an LWOP sentence. (See *People v. Hardin* (2024) 15 Cal.5th 834, 847 [when a statute does not involve a suspect classification or a fundamental right, there is “a denial of equal protection only if there is no *rational* relationship between a disparity in treatment and some legitimate government purpose”].)⁵

DISPOSITION

The trial court’s order is affirmed.

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MORI, J.

We concur:

COLLINS, acting P. J.

TAMZARIAN, J.

⁵ Given our conclusion, we need not address Bhimji’s contention that the trial court erred in considering his eligibility for an early youth offender parole hearing when denying his petition under section 1170(d)(1).