Filed 4/14/22 P. v. Barrascout CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. OSCAR RODOLFO BARRASCOUT, Defendant and Appellant.	2d Crim. No. B312462 (Super. Ct. No. CR26509) (Ventura County)

Oscar Rodolfo Barrascout appeals a superior court order denying his petition to be eligible for a youth offender parole hearing. (Pen. Code, § 3051.)[1] In 1990, he was convicted of first degree murder (§ 187), robbery (§ 211), and burglary (§ 459), and sentenced to life without the possibility of parole (LWOP). When he committed these crimes, he was 22 years of age. We conclude the statutory provision that disqualifies Barrascout from eligibility for a youth offender parole hearing (§ 3051, subd. (h))

[1] All statutory references are to the Penal Code.

because of his LWOP sentence does not violate equal protection of the laws. We affirm.

FACTS

In 1990, the People filed a felony complaint alleging that Barrascout committed murder by killing Gregory Darnel Minor in the commission of robbery and burglary. Barrascout was convicted of first degree murder, robbery, and burglary. He was sentenced to life without the possibility of parole.

On August 10, 2020, Barrascout filed a "motion for record development hearing" in the superior court seeking an order for his eligibility for a youth offender parole hearing under section 3051. He claimed that statute expressly excluded him for eligibility for a youth offender parole hearing because he had an LWOP sentence. He claimed this statutory exclusion violated his constitutional right to equal protection of the law.

The trial court denied the motion. It ruled, "Defendant's equal protection claim fails because he has not demonstrated the state has adopted a classification that affects two or more similarly situated groups in an unequal manner. There is a long history of distinguishing someone like Barrascout, who was 22 years old at the time of his controlling offense, and juveniles. . . . Criminal sentencing has also long distinguished between LWOP and lesser sentences."

DISCUSSION

Equal Protection

Barrascout contends "[s]ection 3051, subdivision (h) . . . expressly excludes defendants, like appellant, where an individual is sentenced to an LWOP sentence for a controlling offense that was committed after the person had attained 18

years of age." He claims that this constitutes a denial of equal protection and that the trial court's order must be reversed.

The Legislature enacted the youth offender parole hearing to generally benefit defendants who were 25 years of age or younger when they committed their offenses. (§ 3051, subd. (a)(1).) "The legislative history suggests the Legislature was motivated by dual concerns: that lengthy life sentences did not adequately account for, first, the diminished culpability of youth, and second, youthful offenders' greater potential for rehabilitation and maturation." (*In re Williams* (2020) 57 Cal.App.5th 427, 434.)

But not all offenses committed by youthful offenders qualify for this statutory benefit. Section 3051, subdivision (h) provides, in relevant part, "This section shall not apply . . . to cases in which an individual is sentenced to life in prison without the possibility of parole for a controlling offense that was committed after the person had attained 18 years of age."

Barrascout was convicted of first degree murder and was sentenced to life without the possibility of parole. He committed his offenses when he was 22 years of age. Consequently, he is not eligible for a youth offender parole hearing by the express terms of this statute.

Barrascout claims this statutory exclusion violates his right to equal protection. We disagree.

"The first step in an equal protection analysis is to determine whether the defendant is similarly situated with those who are entitled to [the benefit provided under law]." (*People v. Cervantes* (2020) 44 Cal.App.5th 884, 888.) " ' "Persons convicted of different crimes are not similarly situated for equal protection purposes." ' " (*In re Williams*, *supra*, 57 Cal.App.5th at p. 435,

italics omitted.) They " 'can be punished differently' " consistent with equal protection standards. (*Ibid.*) " '[O]nly those persons who are similarly situated are protected from invidiously disparate treatment.' " (*Cervantes*, at p. 888.)

Barrascout contends, "[W]hen the Legislature expanded section 3051's parole eligibility mechanism to reach young adults up to the age of 25, its expressly stated rationale was to account for neuroscience research that the human brain – especially those portions responsible for judgment and decision making – continues to develop into a person's mid-20s." He claims, "Measured against this legislative purpose, youthful first degree special circumstance murderers are similarly situated with youthful first degree murderers."

There may be some brain development similarity between the two groups of youthful offenders. " '[B]oth groups committed their crimes before their prefrontal cortexes reached their full functional capacity.' " (*People v. Acosta* (2021) 60 Cal.App.5th 769, 779.) But the issue here is not exclusively determined by the neuroscience effect, it is whether the Legislature could properly distinguish between young adult LWOP murderers and others based on the different nature of the crimes and the defendants who committed them.

Those young adults who commit special circumstance first degree murder and receive LWOP sentences fall within a special and unique category. They are not similarly situated with youthful offenders who commit lesser offenses. They are also not similarly situated with juvenile LWOP defendants. (*People v. Acosta*, *supra*, 60 Cal.App.5th at p. 779.) "The Legislature has prescribed an LWOP sentence for only a small number of crimes." (*In re Williams*, *supra*, 57 Cal.App.5th at p. 436) "These are the

crimes the Legislature deems so morally depraved and so injurious as to warrant a sentence that carries no hope of release for the criminal and no threat of recidivism for society." (*Ibid.*)

Barrascout has not shown that he is similarly situated with those who receive youth offender parole hearings. But even had he made a similarity showing, the result would not change.

Legislature enactments are initially "clothed in a presumption of constitutionality." (*People v. Cruz* (2012) 207 Cal.App.4th 664, 675.) They may exceed constitutional authority where they are arbitrary or irrational. But where the classification does not infringe on constitutional rights or cross "suspect" classification "lines," it will be upheld "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." (*Ibid.*)

"[T]he Legislature is afforded considerable latitude in defining and setting the consequences of criminal offenses." (*Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 887.) " 'A classification is not arbitrary or irrational simply because there is an "imperfect fit between means and ends" ' [citation], or 'because it may be "to some extent both underinclusive and overinclusive." ' " (*Ibid.*)

A legislative classification that treats different classes of defendants differently may be supported by a rational state goal of improving "public safety." (*People v. Cruz*, *supra*, 207 Cal.App.4th at p. 679.) "In excluding LWOP inmates from youth offender parole hearings, the Legislature reasonably could have decided that youthful offenders who have committed such crimes – even with diminished culpability and increased potential for rehabilitation – are nonetheless still sufficiently culpable and

sufficiently dangerous to justify lifetime incarceration." (*In re Williams*, *supra*, 57 Cal.App.5th at p. 436.)

Moreover, there is an additional "rational basis for distinguishing between juvenile LWOP offenders and young adult LWOP offenders: their age." (*People v. Acosta*, *supra*, 60 Cal.App.5th at p. 779.) Age has long been considered to be a rational basis upon which to make constitutionally permissible sentencing distinctions. (*Miller v. Alabama* (2012) 567 U.S. 460, 471.)

For the group of youthful LWOP defendants, the Legislature may rationally decide to only apply the statutory benefits to the youngest members of that group – those under 18. "By drawing the line at a defendant's 18th birthday, the Legislature has chosen to target the youngest, and presumably most deserving, of the group of youthful offenders whose brains were still developing and whose judgment had not yet matured. While young adults share many of the attributes of youth, they are by definition further along in the process of maturation, and the law need not be blind to the difference." (*In re Jones* (2019) 42 Cal.App.5th 477, 482.) "The Legislature could reasonably decide that for those convicted of LWOP crimes, the line should be drawn at age 18 . . . ." (*Id.* at p. 483.)

Consequently, appellate courts have concluded that the young adult LWOP exclusion in section 3051 is not unconstitutional. (*People v. Morales* (2021) 67 Cal.App.5th 326, 347 [section 3051's "line drawn at 18 is a rational one"]; *People v. Jackson* (2021) 61 Cal.App.5th 189, 192 ["the carve out to section 3051 for offenders such as defendant serving an LWOP sentence for special circumstance murder is not an equal protection violation"]; *People v. Acosta*, *supra*, 60 Cal.App.5th at p. 780 ["the

statute, on its face, does not violate equal protection"]; *In re Williams*, *supra*, 57 Cal.App.5th at p. 436 [the exclusion of adult youthful LWOP defendants from youth offender parole hearings was rational and not unconstitutional].) There was no trial court error.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Gilbert A. Romero, Judge

Superior Court County of Ventura

Stephen M. Hinkle, 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, Paul M. Roadarmel, Jr. and John Yang, Deputy Attorneys General, for Plaintiff and Respondent.