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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. MARK THEODORE FREEMAN, Defendant and Appellant.	B328613 Los Angeles County Super. Ct. Nos. A354010, BH014247

APPEAL from an order of the Superior Court of Los Angeles County, William C. Ryan, 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, Noah P. Hill and Steven E. Mercer, Deputy Attorneys General, for Plaintiff and Respondent.

A court sentenced Mark Theodore Freeman to a term of life without the possibility of parole after a jury found him guilty of committing a special circumstance murder when he was 18 years old. More than four decades later, Freeman filed a request to initiate a proceeding under *People v. Franklin* (2016) 63 Cal.4th 261, seeking to make a record of information relevant to a future youth offender parole hearing. The superior court denied the request on the ground Freeman's sentence renders him ineligible for relief. On appeal, Freeman argues the statute that makes him ineligible—Penal Code section 3051, subdivision (h) (section 3051(h))[1]—violates the equal protection guarantees found in the federal and California Constitutions. He also argues the denial of a youth offender parole hearing renders his sentence cruel or unusual punishment in violation of the California Constitution. We affirm.

FACTS AND PROCEDURAL BACKGROUND

In 1979, Freeman went on a crime spree involving 12 victims.[2] Freeman and Michael Jerome Ficklin forced a number of victims into the trunks of cars and robbed them. Two other men—Jimmie Turner and Andre Hurd—were involved in some of the crimes. Freeman raped victim Ora M. The perpetrators also robbed a reverend, Lamont Brown, and his two female companions. The perpetrators let the women go, as one of them was pregnant.

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[1] References to statutes are to the Penal Code.

[2] Freeman's arguments on appeal do not concern the facts of his crimes. Therefore, we take those facts from a prior appellate opinion by this court. (See *People v. Freeman* (April 28, 2022, B310870) [nonpub. opn.].)

A few days later, Freeman, Ficklin, and Hurd "came at [a victim] with guns," as he parked at a fast food restaurant where he was the manager. They forced him into the back seat of his car; Freeman held a gun to his stomach and took his watch, wallet, and everything in his pockets. Freeman, Ficklin, and Hurd then went to the victim's apartment, where his wife and two small children were. They tied up the victim, stole stereo equipment and other items, and left, taking the victim's car.

The threesome—all carrying guns—then robbed another victim. When one of the perpetrators told the others to put that victim in the car trunk, he began to run, saw a police car, and yelled. Police chased Freeman and arrested him after they found him hiding in some weeds.

The murder victim was Tony Johnson. On the morning of September 22, 1979, Freeman and Ficklin were seen driving Johnson's green car when they arrived at a restaurant. When the green car was towed a few days later, Johnson's body was found in the trunk. He had died from a single gunshot wound to his back. An upward dent in the trunk suggested Johnson had tried to get out of the trunk.

A jury convicted Freeman of first degree murder, rape, and multiple counts of robbery and kidnapping for robbery. The jury found true the special circumstances that Freeman committed the murder while he was engaged in the commission of robbery and kidnapping. The trial court sentenced Freeman to indeterminate terms of life without the possibility of parole (LWOP) on the murder count and life (with the possibility of parole) on the kidnapping for robbery counts, as well as to determinate terms on the rape and robbery counts.

In December 2022, Freeman filed a motion to initiate a proceeding under *People v. Franklin* (2016) 63 Cal.4th 261 (*Franklin*) and *In re Cook* (2019) 7 Cal.5th 439 (*Cook*), seeking to make a record of information relevant to a future youth offender parole hearing. Freeman acknowledged he was statutorily barred from receiving a youth offender parole hearing because of his LWOP sentence. Nevertheless, he argued the denial of youth offender parole hearings to LWOP offenders unconstitutionally violates equal protection and the prohibition on cruel or unusual punishment.

The trial court denied Freeman's motion without conducting a hearing. The court chose to follow the weight of authority holding section 3051(h) does not violate equal protection. The court also rejected Freeman's cruel or unusual punishment arguments, explaining it is bound by authority holding 18-year-old offenders may be sentenced to LWOP.

Freeman timely appealed.

DISCUSSION

1. *Relevant law*

Our Legislature enacted section 3051 in light of United States Supreme Court decisions that recognized the lessened culpability and greater prospects for reform that distinguish juvenile from adult offenders. (See Sen. Bill No. 260 (2013–2014 Reg. Sess.); *Graham v. Florida* (2010) 560 U.S. 48; *Miller v. Alabama* (2012) 567 U.S. 460.) Section 3051 requires the Board of Parole Hearings to conduct a "youth offender parole hearing" at specified times during the incarceration of certain youthful offenders. (See § 3051, subds. (a)(1), (b); *Franklin, supra*, 63 Cal.4th at p. 277.)

Section 3051 originally applied to offenders who were younger than 18 years old when they committed the controlling offense. (Stats. 2013, ch. 312, § 4.) Effective January 1, 2016, the Legislature expanded relief to offenders younger than 23 years old. (Stats. 2015, ch. 471, § 1.) The Legislature expanded relief again in 2018, raising the age limit to 26 years old. (Stats. 2017, ch. 675, § 1.)

Under the current version of section 3051, offenders who were younger than 26 years old when they committed the controlling offense generally are eligible for a youth offender parole hearing if they were sentenced to a determinate term or a life term with the possibility of parole. (§ 3051, subd. (b).) Offenders sentenced to LWOP are entitled to a hearing only if they were younger than 18 years old when they committed the controlling offense. (*Id.*, subd. (b)(4).) The statute explicitly states it does 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." (*Id.*, subd. (h).)

In *Franklin*, the California Supreme Court interpreted section 3051 to require a youth offender have a "sufficient opportunity to make a record of information relevant to his eventual youth offender parole hearing." (*Franklin*, *supra*, 63 Cal.4th at p. 284.) These hearings are commonly referred to as *Franklin* hearings. At a *Franklin* hearing, the offender and the People have the opportunity to "put on the record any evidence that demonstrates the juvenile offender's culpability or cognitive maturity, or otherwise bears on the influence of youth-related factors" at the time of the offense. (*Ibid.*) In *Cook, supra*, 7 Cal.5th 439, the California Supreme Court held "an offender

entitled to a hearing under section[ ] 3051 . . . may seek the remedy of a *Franklin* proceeding even though the offender's sentence is otherwise final." (*Id*. at p. 451.)

2. *Section 3051(h) does not violate equal protection*

Freeman was 18 years old when he committed the offense that resulted in an LWOP sentence. As Freeman acknowledges, because he was not a juvenile when he committed the controlling offense, and because he was sentenced to LWOP, he is ineligible for a youth offender parole hearing under section 3051(h). Nevertheless, Freeman argues he is entitled to a *Franklin* hearing because section 3051(h) violates the equal protection guarantees found in the United States and California Constitutions.

"At core, the requirement of equal protection ensures that the government does not treat a group of people unequally without some justification." (*People v. Chatman* (2018) 4 Cal.5th 277, 288 (*Chatman*).) Where the challenged law is not based on a suspect classification and does not burden fundamental rights, the law denies equal protection "only if there is no *rational* relationship between a disparity in treatment and some legitimate government purpose. [Citation.] This core feature of equal protection sets a high bar before a law is deemed to lack even the minimal rationality necessary for it to survive constitutional scrutiny. Coupled with a rebuttable presumption that legislation is constitutional, this high bar helps ensure that democratically enacted laws are not invalidated merely based on a court's cursory conclusion that a statute's tradeoffs seem unwise or unfair." (*Id*. at pp. 288–289; see *In re Murray* (2021) 68 Cal.App.5th 456, 463–464 (*Murray*) [applying rational basis review to claim section 3051 violates equal protection].)

"[W]hen plaintiffs challenge laws drawing distinctions between identifiable groups or classes of persons, on the basis that the distinctions drawn are inconsistent with equal protection, courts no longer need to ask at the threshold whether the two groups are similarly situated for purposes of the law in question. The only pertinent inquiry is whether the challenged difference in treatment is adequately justified under the applicable standard of review." (*People v. Hardin* (2024) 15 Cal.5th 834, 850–851.)

"A classification in a statute is presumed rational until the challenger shows that no rational basis for the unequal treatment is reasonably conceivable. . . . The underlying rationale for a statutory classification need not have been ' "ever actually articulated" ' by lawmakers, and it does not need to ' "be empirically substantiated." ' " (*Chatman, supra*, 4 Cal.5th at p. 289.) We independently review equal protection claims. (*People v. Morales* (2021) 67 Cal.App.5th 326, 345 (*Morales*).)

Freeman argues young adult offenders sentenced to LWOP —like himself—are similarly situated to two other groups: (1) juvenile offenders sentenced to LWOP, and (2) young adult offenders sentenced to non-LWOP terms. According to Freeman, the Legislature lacked any rational basis to grant youth offender parole hearings to the latter groups—juvenile LWOP offenders and young adult non-LWOP offenders—while denying hearings to the former group—young adult LWOP offenders.

Courts of Appeal have unanimously rejected Freeman's argument that section 3501(h) violates equal protection by treating differently juvenile offenders sentenced to LWOP and young adult offenders sentenced to LWOP. (See, e.g., *People v.*

Bolanos (2023) 87 Cal.App.5th 1069, 1079; *Murray, supra*, 68 Cal.App.5th at p. 463; *Morales, supra*, 67 Cal.App.5th at p. 347; *People v. Jackson* (2021) 61 Cal.App.5th 189, 196–197; *People v. Sands* (2021) 70 Cal.App.5th 193, 204; *People v. Acosta* (2021) 60 Cal.App.5th 769, 779–780.) As the court in *Sands* explained, the "Legislature had a rational basis to distinguish between offenders with the same sentence (life without parole) 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 . . . . [T]he Legislature could rationally decide to remedy unconstitutional sentences but go no further." (*Sands*, at p. 204.) We agree with these courts and reject Freeman's argument for the same reasons.

As to Freeman's other argument, while his appeal was pending, the California Supreme Court decided *People v. Hardin*, *supra*, 15 Cal.5th 834, which confirmed section 3051 does not violate equal protection by treating differently young adult offenders sentenced to LWOP and young adult offenders sentenced to non-LWOP terms. (*Hardin*, at pp. 838–840.) We are bound by this authority. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455–456.) Accordingly, we reject Freeman's argument and affirm the order denying his motion for a *Franklin* hearing.

3. *Section 3051(h) does not render Freeman's LWOP sentence cruel or unusual*

Freeman argues, absent the possibility of a youth offender parole hearing, an LWOP sentence imposed on a young adult offender categorically constitutes cruel or unusual punishment in violation of the California Constitution.

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.) "A punishment is cruel or unusual in violation of the California Constitution 'if, although not cruel or unusual in its method, it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity.' [Citation.] Because it is the Legislature's function to define crimes and prescribe punishments, the judiciary should not interfere 'unless a statute prescribes a penalty "out of all proportion to the offense." ' " (*People v. Baker* (2018) 20 Cal.App.5th 711, 723 (*Baker*).)

Freeman concedes his sentence was neither cruel nor unusual at the time it was imposed. As he acknowledges, the United States and California Supreme Courts have held the Legislature may prescribe the most severe punishments for adult offenders, i.e. offenders who are at least 18 years old. (See *Roper v. Simmons* (2005) 543 U.S. 551, 574 [18 is the "age at which the line for death eligibility ought to rest"]; *People v. Flores* (2020) 9 Cal.5th 371, 429 (*Flores*) [rejecting argument the death penalty may not be constitutionally applied to offenders who were 21 years of age or younger].)

Nevertheless, Freeman argues his LWOP sentence became constitutionally infirm once the Legislature granted youth offender parole hearings to some offenders over the age of 18. According to Freeman, by extending relief to non-juvenile offenders, the Legislature rejected 18 years old as the dividing

line between adults and children. He asserts the Legislature instead recognized young adults up to age 26 have an immature mentality and should be given the opportunity to demonstrate eligibility for parole.

In making this argument, Freeman overlooks that in 2020 —four years after the Legislature extended youth offender parole hearings to young adult offenders up to age 23, and two years after it extended the relief to offenders up to age 26—the California Supreme Court held the death penalty for young adult offenders is not cruel and unusual punishment. (See *Flores*, *supra*, 9 Cal.5th at p. 429.) As the court in *In re Williams* (2020) 57 Cal.App.5th 427 aptly put it, if the ban on cruel and unusual punishment "does not prohibit a sentence of death for [young adult offenders], then most assuredly, it does not prohibit the lesser LWOP sentence." (*Id.* at p. 439.) Although *Flores* was decided on federal constitutional grounds (*Flores*, at p. 429), Freeman suggests no reason why its reasoning would not also apply to claims under the California Constitution. (See *Baker, supra*, 20 Cal.App.5th at p. 733 [noting the "considerable overlap in the state and federal approaches" to cruel and/or unusual punishment].) Accordingly, we reject Freeman's argument that LWOP sentences imposed on young adult offenders constitute cruel or unusual punishment in violation of the California Constitution. (See *Williams*, at p. 439 [rejecting argument LWOP sentences are cruel and unusual punishment when imposed on 21-year-old offenders]; *People v. Argeta* (2012) 210 Cal.App.4th 1478, 1482 [rejecting claim that a functional LWOP sentence for an 18-year-old offender is categorically cruel and/or unusual punishment].)

DISPOSITION

We affirm the order.

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EGERTON, J.

We concur:

EDMON, P. J.

LAVIN, J.