Filed 10/31/24 P. v. Celis CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. FRANCISCO CELIS, Defendant and Appellant.	B328592 (Los Angeles County Super. Ct. No. BA144461)

APPEAL from an order of the Superior Court of Los Angeles County, William C. Ryan, Judge. Affirmed.

Edward Mahler, 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, Steven D. Matthews and Amanda V. Lopez, Deputy Attorneys General for Plaintiff and Respondent.

In 1997, Francisco Celis was convicted of special circumstance first degree murder. (Pen. Code,[1] § 187, subd. (a); § 190.2, subd. (a)(17).) Celis was 22 years old at the time he committed the offense. He was sentenced to life without parole.

In 2022, Celis filed a motion requesting a hearing to preserve evidence for use at a future youth offender parole hearing pursuant to section 1203.01 (*Franklin* motion). (*People v. Franklin* (2016) 63 Cal.4th 261; *In re Cook* (2019) 7 Cal.5th 439.) The trial court denied the motion on the ground that youth offender parole hearings are not available for offenders serving sentences of life without parole for an offense committed after the offender attained 18 years of age. (§ 3051, subd. (h).)

Celis appeals the trial court's order. We affirm.

DISCUSSION

A. *Legal Principles*

"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. (§§ 3051, 4801.) When it was first enacted in 2013, the statute applied only to individuals who committed their crimes before the age of 18; the purpose of the statute was to align California law with then-recent court decisions identifying Eighth Amendment limitations on life without parole sentences for juvenile offenders. In more recent years, however, the Legislature has expanded the statute to include certain young adult offenders as well. Under

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

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. (§ 3051, subd. (b).) 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. (*Id.*, subd. (h).)" (*People v. Hardin* (2024) 15 Cal.5th 834, 838.)

"[A] *Franklin* hearing allows a juvenile [or youthful] offender to preserve evidence of youth-related mitigating factors for purposes of a youthful offender parole hearing to be held in the future pursuant to section 3051." (*People v. Ngo* (2023) 89 Cal.App.5th 116, 118, fns. omitted.)

B. *Analysis*

On appeal, Celis concedes that the Supreme Court has foreclosed the sole equal protection argument he made in the trial court—that section 3051, subdivision (h)'s bar of youthful offenders[2] sentenced to LWOP from youth parole eligibility violates equal protection on its face. (*People v. Hardin*, *supra*, 15 Cal.5th at p. 858.) Celis instead asks this court to remand the matter to the trial court so that he may amend his *Franklin* motion to challenge section 3051 on the ground that it violates equal protection as applied to youthful offenders of color like himself, because they are disproportionately charged with special

[2] Youthful offenders are persons who committed the crime for which they were sentenced when they were between 18 and 25 years of age.

circumstance murder and therefore disproportionately denied the opportunity for a youth parole hearing.[3]

The People respond that Celis forfeited this claim by failing to raise it in the trial court. Celis counters that application of the rule of forfeiture is not automatic—the court may exercise its discretion not to find forfeiture when the issue raised presents an important constitutional question or issue of public concern. Celis further argues that even when the existing record on appeal is insufficient to resolve a claimed violation of equal protection, the court may exercise its discretion to remand the matter to the trial court for further proceedings.

An equal protection claim may be forfeited if not raised in the trial court. (*People v. Barner* (2024) 100 Cal.App.5th 642, 662–663; *People v. Dunley* (2016) 247 Cal.App.4th 1438, 1447; *People v. Alexander* (2010) 49 Cal.4th 846, 880, fn. 14; *People v. Rogers* (2006) 39 Cal.4th 826, 854.) However, the Court of Appeal may exercise its discretion to reach the merits of a facial challenge on equal protection grounds made for the first time on appeal. (*In re Sheena K.* (2007) 40 Cal.4th 875, 887.) This is because, unlike as-applied constitutional claims, facial constitutional challenges involve pure questions of law that are not " 'correctable only by examining factual findings in the record or remanding to the trial court for further findings.' " (*Ibid.*)

The cases that Celis cites where the appellate court has made an exception to the forfeiture rule for an as-applied equal protection challenge are inapposite. *People v. Washington* (2021) 72 Cal.App.5th 453 (*Washington*) and *People v. Magana* (2022) 76 Cal.App.5th 310 (*Magana*) both addressed whether the Sexually

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[3] We assume for the sake of argument that Celis's equal protection challenge is cognizable in a *Franklin* motion.

Violent Predator Act (SVPA) violated equal protection because it did not require trial courts to advise SVP's of their right to a jury trial or to obtain an express waiver of that right in SVP proceedings, although other involuntary commitment statutes provided those protections. (*Washington*, at pp. 458–459; *Magana*, p. 314.) In *Washington* and *Magana*, the Court of Appeal, Second District, Division Seven, exercised its discretion not to find forfeiture because the defendant could not have been reasonably expected to raise his equal protection claim in the trial court. The *Washington* court explained: "The only way Washington could have asserted an equal protection challenge in the trial court would have been for his attorney to request the trial court advise Washington of his right to a jury trial and take a personal waiver of that right. Then, if the court declined to do so based on the absence of a requirement in the SVPA, Washington's attorney could have argued not doing so would violate equal protection principles." (*Washington*, p. 474.) That is not the situation here. The proffered disparities in prosecution that lie at the heart of Celis's claim were known to him at the time he filed his *Franklin* motion, and there were no procedural circumstances that hampered his claim or any other obstacles that made it infeasible to assert. He was therefore required to present his as-applied equal protection claim in the trial court. Because he did not do so, Celis's claim is forfeited.

DISPOSITION

We affirm the trial court's order denying Celis's motion for a youth offender parole hearing pursuant to Penal Code section 1203.01.

NOT TO BE PUBLISHED.

MOOR, J.

WE CONCUR:

BAKER, Acting, P. J.

DAVIS, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.