

In the Supreme Court of the State of California

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

**LEONEL CONTRERAS and WILLIAM
STEVEN RODRIGUEZ,**

Defendant and Appellant.

Case No. S224564

**SUPREME COURT
FILED**

MAR 27 2017

Jorge Navarrete Clerk

Appellate District Division One, Case No. SCD236438
San Diego County Superior Court, Case No. D063428
The Honorable Peter C. Deddeh, Judge

Deputy

**RESPONDENT'S ANSWER TO PACIFIC JUVENILE
DEFENDER CENTER'S AMICUS CURIAE BRIEF**

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INTRODUCTION

Pacific Juvenile Defender Center (PJDC) argues in its amicus curiae brief that to comply with the Eighth Amendment, youthful offenders must receive a sentence that “will *certainly* provide a ‘meaningful opportunity’ to demonstrate the ‘maturity and rehabilitation’ required to obtain release and reenter society.” (PJDC Amicus Curiae Brief (ACB) 15, italics added.) PJDC maintains that holding a parole hearing within an offender’s natural life expectancy fails to satisfy the Eighth Amendment because relying on statistical life expectancies provides an inaccurate measure in many individual cases. (*Id.* at pp. 15-22.)

But the Constitution does not require certainty, only a meaningful opportunity to show rehabilitation. That meaningful opportunity is satisfied when a juvenile is given a parole hearing that provides hope of some years outside prison walls. PJDC’s proposed rule is wholly untethered from the United States Supreme Court’s doctrinal foundation for the limitations it has imposed on punishment for juveniles under the Eighth Amendment. Namely, the high court has created categorical limitations where the juvenile is sentenced to the functional equivalent of a death sentence. PJDC would have this Court create a 25-year limitation on juvenile sentences to ensure that juveniles are given a certain opportunity to demonstrate rehabilitation and maturity. But PJDC does not suggest that this sentence is necessary to avoid the functional equivalent of a death sentence. Unmoored and set adrift from any doctrinal support, PJDC’s proposed sentence does not even rectify the problem its rule was meant to solve. There is no guarantee a juvenile will survive a 25 year sentence; indeed there is no certainty that *any* person will survive *any* term of *any* length. And that is precisely why the Constitution makes no such guarantee.

Nor are PJDC's attacks on the use of life expectancy statistics well taken. PJDC misreads and selectively cites statistics regarding life expectancies in California prisons, failing to mention that the overall death rate in California prisons is 19% *lower* than that outside prison. Moreover, contrary to PJDC's assertions, reliance on such data does not create an intractable equal protection difficulty. Ultimately, life expectancy data provides a useful measure for determining whether a juvenile offender should have "hope" of some years outside prison. While a given individual may not survive as statistically expected, this possibility is not enough to eliminate hope or render the sentence the functional equivalent of a death judgment.

ARGUMENT

I. THE EIGHTH AMENDMENT DOES NOT REQUIRE CERTAINTY OF A GUARANTEED RELEASE, ONLY A REALISTIC OPPORTUNITY TO DEMONSTRATE REHABILITATION

In *Graham v. Florida* (2010) 560 U.S. 48 (*Graham*), the United States Supreme Court provided the operative measure for determining the outer lengths of a juvenile's sentence: "A State is *not required to guarantee* eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some *meaningful opportunity* to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance." (*Id.* at p. 75, italics added.) As the *Graham* court subsequently expressed, "A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with *some realistic opportunity* to obtain release before the end of that term." (*Id.* at p. 82, italics added.)

Notwithstanding the high court's express disavowal of any requirement that the state guarantee a juvenile's eventual freedom, PJDC

asks this Court to limit the maximum sentence that a juvenile can receive to one “that will *certainly* provide a ‘meaningful opportunity’ to demonstrate the ‘maturity and rehabilitation’ required to obtain release and reenter society.” (PJDC ACB 15, italics added.) But the *Graham* court did not require a “certain opportunity” to demonstrate maturity and rehabilitation. Nor would such a requirement make sense—a fact that PJDC’s proposed sentence demonstrates. PJDC would apparently have this Court impose a maximum sentence of 25 years to life (PJDC ACB 15), but even this term would not guarantee that every juvenile would have a chance to demonstrate maturity and rehabilitation.

Rather than guarantee a certain opportunity to demonstrate rehabilitation, the Constitution requires only a “realistic opportunity.” As the high court later clarified, such an opportunity is one that provides “hope for some years of life outside prison walls.” (*Montgomery v. Louisiana* (2016) __ U.S. __ [136 S.Ct. 718, 736-737] (*Montgomery*)). A sentence that is within a person’s natural life expectancy provides that hope and is realistic.

PJDC’s new “certain opportunity” test entails much more than a mere semantic distinction with the high court’s “meaningful opportunity” requirement as expressed in *Graham* and later in *Montgomery*. Most important, this new test is divorced from the doctrinal underpinnings that gave rise to the categorical limitations on certain terms for juveniles in the first place. As respondent explained at length in its Reply Brief, the *Graham* rule depends on its equating a term of life without parole to the functional equivalent of a death judgment for a juvenile. (Reply 10-12.) If the sentence is not the functional equivalent of a death judgment, then the Eighth Amendment’s categorical limitations on punishment incorporated from the high court’s capital case law no longer apply. Second, where there is hope of release, even release at a distant date, then an offender has both

an incentive to rehabilitate and an opportunity to show that rehabilitation. Consequently, the state has a penological justification for the lengthy term. (Reply 12-13.)

PJDC's proposed new rule requiring a parole hearing after 25 years ignores these doctrinal foundations. A 16-year-old who serves 25 years before being given an opportunity for parole at 41 has not received the functional equivalent of a death judgment. Without the ability to equate a juvenile's sentence to a death judgment, there can be no categorical challenge under the Eighth Amendment to a juvenile's term-of-years sentence. Moreover, PJDC does not challenge respondent's point that rehabilitation remains a valid penological goal even where a sentence is very lengthy so long as there is a realistic hope of release. (Reply 14.) In sum, PJDC would alter and expand Eighth Amendment restrictions well beyond those recognized by the United States Supreme Court.

II. STATISTICAL DATA PROVIDE A USEFUL MEASURE FOR DETERMINING WHETHER THERE IS HOPE OF SOME YEARS OUTSIDE PRISON WALLS

In *People v. Caballero* (2012) 55 Cal.4th 262 (*Caballero*), this Court looked to whether the defendant's "parole eligibility date ... [fell] outside [his] natural life expectancy...." (*Id.* at p. 268.) It defined "life expectancy" as "the normal life expectancy of a healthy person of defendant's age and gender living in the United States." (*Id.* at p. 267, fn. 3.)

PJDC suggests this language is not dispositive because the 110-year-to-life sentence in *Caballero* "plainly exceeded a lifetime" and the Court was not called upon to decide whether a lengthy sentence not exceeding life expectancy violates the Eighth Amendment. (PJDC ACB 16.) PJDC argues that reliance on life expectancy statistics is "fatally flawed" because prisoners do not live as long as free persons and because such statistics, to

be accurate, must consider race and other factors, which would only lead to equal protection violations. (PJDC ACB 18-22).

At the outset, PJDC is incorrect to dismiss the importance of this Court's working definition of life expectancy in *Caballero*. In order to evaluate *Graham's* requirement of "some realistic opportunity to obtain release" (*Graham, supra*, 560 U.S. at p. 82), this Court had to determine whether a 16 year-old such as Caballero could realistically ever be eligible for parole. To do so, this Court had to look to how long Caballero could reasonably be expected to live. And to complete this analysis, this Court needed a measure by which to judge life expectancy. The remote chance that Caballero might live to 126 when he would be eligible for parole was not a sufficient basis for finding that Caballero's sentence did not violate his Eighth Amendment rights. This Court's decision to look to normal life expectancies, and to define those normal life expectancies solely based on a defendant's age and gender, rather than race, was an essential part of the Court's holding and one that informs the present issue as well.

Nor are PJDC's criticisms of the People's statistics sound. In asserting that prisoners in California have lower life expectancies than persons on the outside, PJDC selectively quotes from one source and relies on the same flawed reading of another source relied on by appellants. PJDC maintains that "Death rates for prison inmates age 55 to 64 are 56% higher as compared to the general population." (PJDC ACB 21, citing Bureau of Prison Statistics, *Data Brief: Medical Causes of Death in State Prisons, 2001-2004* (January 2007) at p. 3 (Bureau of Prison Statistics).)¹ While focusing on this one specific age group, PJDC fails to mention that

¹ This document is available at <https://bjs.gov/content/pub/pdf/medsp04.pdf>. PJDC does not ask this Court to take judicial notice of it.

the *overall mortality rate* for prisoners aged 15 to 64 was 19% *lower* than for persons living outside prison. (Bureau of Prison Statistics at p. 3.)² PJDC asserts it is a “shocking fact” that in 2015 in California the average inmate life expectancy for males was 57 years and 52 years for females. (PJDC ACB 22, citing Imai, *Analysis of 2015 Inmate Death Reviews in the California Correctional Healthcare System*, Table 4, at p. 10 (2015 Death Reviews).)³ But as respondent noted in response to a similar argument made by appellants, this is not what the statistics show. (Reply 19.) While it is true that the 355 people who died in California prisons in 2015 had the average ages that PJDC notes, it does not follow that those ages establish the life expectancies for all of California’s 127,815 prisoners. PJDC does not acknowledge respondent’s Reply, and instead continues to propagate the same flawed reasoning advanced by appellants. These statistics do not establish that life expectancy in California prisons is less than that outside prison. For instance, even though prisons house many dangerous and violent felons, the murder rate in California’s prisons is nonetheless *lower* than in some metropolitan areas such as Washington, D.C. (2015 *Death Review* at 9.)

Moreover, even if there are differences in life expectancies between persons living inside and outside prison, it does not follow that reliance on natural life expectancy provides an inaccurate metric. As addressed above,

² It is also noteworthy that these statistics were taken at a time when the number of deaths in California prisons exceeded 1,300. (See Bureau of Prison Statistics, at p. 3.) As discussed further below, this rate has plummeted and is now at 355 persons for 2015.

³ This document is available at <http://www/cphcs.ca.gov/docs/resources/Analysis%20of%20Year%202015%20Inmate%20Death%20Reviews%2010-6-16.pdf>. Again, PJDC does not ask the Court to notice this document.

the question under the Eighth Amendment is whether there is “hope” of some years outside prison (*Montgomery, supra*, 136 S.Ct. at pp. 736-737); alternatively expressed, a sentence may not deprive a juvenile of liberty without “hope of restoration” (*Graham, supra*, 560 U.S. at p. 70), may not remove “any chance” to demonstrate that he is fit to rejoin society (*id.* at p. 79), and may not “guarantee” that he will die in prison (*ibid.*). Even if perhaps imperfect, natural life expectancy data are not so skewed or unreliable as to mean that a juvenile no longer has “some realistic opportunity” to obtain release (*id.* at p. 82) from a sentence that falls within those parameters.

PJDC maintains that life expectancies must properly take into account differences across not only gender, but also (notwithstanding this Court’s definition of natural life expectancy in *Caballero*) race, region and economic status. (PJDC ACB 17-18.) But while such considerations may correspond to differences among death rates for persons outside prison, PJDC fails to show that the same is true for those inside prison, where living conditions, medical treatment, and wealth are roughly the same for all. Moreover, as PJDC notes, considering factors such as race would only potentially lead to constitutional issues based on unequal treatment. (PJDC ACB 20.)

Finally, even if PJDC could establish substantial differences in the life spans of persons inside and outside prison, it fails to respond to respondent’s point that evidence of any such differences was neither presented to the trial court, nor were any objections made to the statistical evidence provided by the prosecution. (Reply 20.)

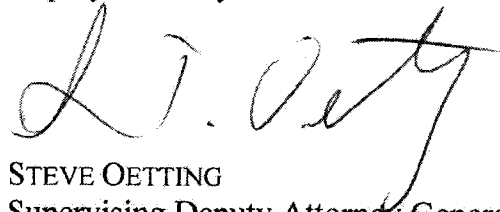
CONCLUSION

Accordingly, for the reasons stated above, respondent respectfully requests that this Court affirm the trial court's sentence.

Dated: March 23, 2017.

Respectfully submitted,

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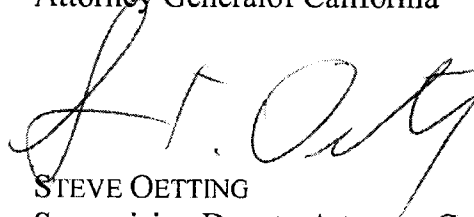
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CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S ANSWER TO PACIFIC JUVENILE DEFENDER CENTER'S AMICUS CURIAE BRIEF uses a 13 point Times New Roman font and contains 1,988 words.

Dated: March 23, 2017

XAVIER BECERRA
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A handwritten signature in black ink, appearing to read "S. Oetting", written over the printed name of Steve Oetting.

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DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **People v. Leonel Contreras, et al and William Rodriguez, et al**
No.: **S224564**

I declare: I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On March 24, 2017, I electronically served the attached ***RESPONDENT'S ANSWER TO PACIFIC JUVENILE DEFENDER CENTER'S AMICUS CURIAE BRIEF*** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on March 24, 2017, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 24, 2017, at San Diego, California.

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