IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff and Respondent, v. JEREMIAH IRA WILLIAMS, Defendant and Appellant.	No. S262229 Court of Appeal No. D074098

Fourth Appellate District, Division One
San Diego County Case No. SCD268493
The Honorable Kenneth So, Judge

APPELLANT'S BRIEF ON THE MERITS

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ISSUE PRESENTED FOR REVIEW

Does Penal Code section 3051, subdivision (h), violate the equal protection clause of the Fourteenth Amendment by excluding young adults convicted and sentenced for serious sex crimes under the One Strike law (Pen. Code, § 667.61) from youth offender parole consideration, while young adults convicted of first degree murder are entitled to such consideration?

INTRODUCTION

Appellant Jeremiah Williams was 24 years old when he was arrested for sexual assaults on two women, committed one day apart, in the summer of 2016. He was convicted following a jury trial and sentenced pursuant to Penal Code section 667.61[1] to a term of 100 years to life, plus 86 years. Because of his age at the time of the offense, Mr. Williams should be eligible for youth offender parole after serving 25 years (§ 3051, subd. (b)(3)), but for subdivision (h) of section 3051, which excludes youthful offenders sentenced according to section 667.61.

The Court of Appeal rejected Mr. Williams's contention that excluding him from consideration for early parole violates his right to equal protection under the Fourteenth Amendment and article I, section 7 of the California Constitution. Instead, the court held the Legislature had a rational basis for excluding One Strike Offenders from youth parole consideration. (*People v. Williams* (2020) 47 Cal.App.5th 475, 489-493.)

The lower court's opinion disagreed with *People v. Edwards* (2019) 34 Cal.App.5th 183, in which the First District, Division Four, determined that the exclusion of youthful "One Strike" offenders did indeed violate principles of equal protection, even if allowable under the Eighth Amendment because the defendants were not juveniles at the time of the offense. Since this court granted review, at least one other Court of Appeal has weighed in

[1] Subsequent statutory citations will be to the California Penal Code unless otherwise noted.

with a published decision that agreed with the reasoning in this case. (See, *People v. Moseley* (Jan. 20, 2021, B303321) ___Cal.App.5th___ [2021 Cal. App. LEXIS 51.) This court granted review to settle the dispute.

STATEMENT OF THE CASE

On April 17, 2018, appellant Jeremiah Williams was charged by amended information in case number SCD268493 with the following felony offenses:

Count 1– Robbery, in violation of section 211;

Counts 2, 8, 9, and 11 – Making criminal threats, in violation of section 422;

Counts 3 and 6 – Forcible rape, in violation of section 261, subdivision (a)(2);

Count 4 – Forcible penetration, in violation of section 289, subdivision (a);

Count 5 – Forcible oral copulation, in violation of section 288a, subdivision (c)(2)(A);

Count 7 – Burglary, in violation of section 459;

Count 10 – Sodomy by use of force, section 286, subdivision (c)(2)(A);

Count 12 – Assault with a firearm, in violation of section 245, subdivision (a)(2); and

Count 13 – False imprisonment by violence, menace, fraud, and deceit, in violation of sections 236 and 237, subdivision (a).

(1 C.T. 53-64.)

It was alleged as to counts 1, 3 through 6, and 10 that appellant personally and intentionally used a firearm within the meaning of sections 12022.53, subdivision (b) and 12022.5, subdivision (a), and personally inflicted great bodily injury within the meaning of section 12022.8. It was additionally alleged Mr. Williams committed counts 3 through 6 and 10 during the commission of kidnapping and burglary, with the use of a weapon, personal infliction of great bodily injury, and being convicted of a specified offense against more than one victim, within the meaning of section 667.61, subdivisions (a) through (e). (1 C.T. 53-63.)

A jury convicted Mr. Williams on counts 1 through 9 and 11 through 13 with true findings on all allegations except the multiple victim allegations attached to counts 3 through 6. He was found not guilty on count 10, sodomy by force, but guilty of the lesser included offenses of battery and assault, in violation of sections 240 and 242. (3 C.T. 582-588, 590-615.)

On May 29, 2018, Mr. Williams was sentenced to consecutive terms of 25 years to life for counts 3, 4, 5, and 6. The court imposed an additional 10 years on each count pursuant to section 12022.53, subdivision (b), and 5 years pursuant to section 12022.8, a total of 15 years on each of counts 3 through 6. The court imposed the upper term of 6 years for count 1, and remaining terms were imposed at one-third the midterm: 1 year, 4 months for count 7, 1 year for count 12, and 8 months each for counts 2, 8, 9, 11 and 13. 10 years was imposed for count 1 pursuant to section 12022.53, and terms of 1 year, 4 months for

each of counts 2, 7, and 11 pursuant to section 12022.5. A misdemeanor term of 6 months on count 10 was ordered consecutive to the prison terms. Appellant's aggregate term of imprisonment is 100 years to life, plus 86 years, 2 months. (3 C.T. 518-523, 617-623.)

In D074098, Mr. Williams raised several issues, including that his rights to equal protection under the state and federal constitutions would be violated by his exclusion from youthful offender parole consideration pursuant to section 3051, subdivision (h). The Court of Appeal affirmed the judgment on April 6, 2020, and this court granted the Petition for Review on July 22, 2020.

STATEMENT OF FACTS

A. Evidence Related to the Incident at Jane Doe 1's Apartment the Night of August 13, 2016 (Counts 1-9)

On the evening of August 13, 2016, at approximately 6:00 p.m., a friend picked up Jane Doe 1 from her apartment at The Venetian complex on Nobel Drive in San Diego. (5 R.T. 785-786.) They met more friends at Mission Bay and had a barbeque until around 10:00 p.m. (5 R.T. 786-788.) The friends dropped Doe 1 at the gated entrance to her apartment complex, and she entered through the pedestrian gate. (5 R.T. 788-790.) As she walked through the garage building's bottom level, a man she did not know approached and asked if she needed help carrying her things. (5 R.T. 791, 797-799; 12 R.T. 2311.) Doe 1 walked quickly

to her apartment on the second floor, but the man followed her, saying he was looking for a friend's apartment. (5 R.T. 800, 804, 806.) As Doe started to unlock her apartment, the man knocked her down, held a handgun to her head and demanded money. (5 R.T. 806-807, 809-810.) Doe 1 gave him a necklace, her wallet, and her phone. (5 R.T. 808, 810-811, 816.) He then forced her inside the apartment, choked her, and asked for more money or valuables. (5 R.T. 818-820, 822-824.)

The assailant punched Doe in the face, causing her to fall and fracture her face. (5 R.T. 826-827.) He pulled her shorts off and dragged her to the bedroom, where he raped and orally copulated her. (5 R.T. 828, 830-831-835, 839-840.) After he was finished, he took Doe into the bathroom, where she gave him a jewelry box and a pair of earrings. (5 R.T. 840.) The man then had Doe get into the bathtub and he washed her face with a washcloth, and then left her in the tub with the curtain closed. (5 R.T. 841-844.) After waiting 20 or 30 minutes, Doe 1 left the bathroom, got dressed, and went to the neighbors' apartment for help. (5 R.T. 845-846; 882; 8 R.T. 1412-1414.) One of the neighbors drove Doe to the nearby hospital, where she was treated for multiple injuries. (5 R.T. 848-851, 883.)

Doe 1 viewed a photo lineup on August 23 but was unable to identify the perpetrator. (6 R.T. 1025-1030.) She did positively identify appellant at the preliminary hearing. (12 R.T. 2311.) Several DNA samples were collected from the comforter in Jane Doe 1's bedroom, and one of the samples from the comforter showed a strong likelihood that appellant was the contributor.

(10 R.T. 1961-1963.) Testing of a neck swab from Doe's SART exam could not exclude appellant, providing "limited statistical support" for the inclusion of appellant as a contributor. (10 R.T. 1965.) Data from appellant's cell phone indicated that he was in the area of Doe 1's apartment at around 8:32 p.m. (9 R.T. 1713-1714, 1720.)

B. Evidence of Assault, Threats, and False Imprisonment of Jane Doe 2 on August 14, 2016 (counts 10-13)

The day after the attack on Doe 1, officers responded to a call of a disturbance at a Motel 6 on Alvarado Canyon Road at approximately 11:49 p.m.. (6 R.T. 1066-1068, 1134-1135.) Witnesses reported a female screaming in room 226, and officers arrived at the room to find a window broken. (6 R.T. 1068-1069, 1079, 1135.) The room was empty when officers entered, but there was blood on the walls, bed, and floor. (6 R.T. 1070.) A guest staying at the motel reported hearing the screaming, and when he and another guest went to the room on the second floor, they saw a man and woman through the window, both naked, struggling on the bed. (6 R.T. 1079-1082.) The witnesses saw the man strike the woman, Jane Doe 2, who had blood pouring down her head. (6 R.T. 1084-1086.) Jane Doe 2 started pounding on the window with closed fists until it broke, and the witness outside helped her climb out the window. (6 R.T. 1086-1087.) Before police arrived, Jane Doe 2 got into a car that drove up to the motel and left the area. (6 R.T. 1087-1088, 1096-1098, 1101-1102.)

A CHP officer in the area encountered appellant running on the sidewalk, wearing only a pair of shorts, and blood on his upper body. He had a handgun in his pocket. (6 R.T. 1124-1125, 1129-1130.) Appellant was taken into custody. (6 R.T. 1137-1138.) Doe 2 went to the hospital two days later and spoke to the police at that time. (7 R.T. 1254, 1256, 1365.) A few days later, Doe 2 was interviewed again at the police department, and she selected appellant's picture from a photographic lineup. (7 R.T. 1447-1448, 1452-1453.)

At trial Doe 2 testified that she was "prostituting" at the Motel 6 on August 14, 2016. (7 R.T. 1215.) Appellant called Doe 2's phone and made an appointment, and agreed to pay $200. (7 R.T. 1221, 1224; 12 R.T. 2312.) Appellant came into the room, set money down by the TV and went into the restroom. (7 R.T. 1225-1226.) When he came out of the restroom, he seemed different. (7 R.T. 1226.) She said they fought, and he started to choke her, and asked her if she wanted to die. (7 R.T. 1226-1228.) She screamed as loud as she could for help and tried to fight appellant off. (7 R.T. 1235.) Doe 2 tried to run out the door, but he grabbed her, pulled her back, and struck her in the head. (7 R.T. 1230, 1239, 1241, 1255-1256.) She finally pulled away and got to the window, where she saw people outside. (7 R.T. 1245.) She broke the window with her hands and climbed out. (7 R.T. 1245-1247.)

ARGUMENT

THE EXCLUSION IN PENAL CODE SECTION 3051 OF OTHERWISE ELIGIBLE YOUTHFUL OFFENDERS SENTENCED PURSUANT TO SECTION 667.61 FROM RECEIVING A YOUTH OFFENDER PAROLE HEARING VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT BECAUSE THERE IS NO COMPELLING INTEREST OR RATIONAL BASIS FOR THE EXCLUSION

A. Background

1. Recent Developments in Eighth Amendment Jurisprudence Pertaining to Youthful Offenders

Over a period of several years in a series of rulings, the United States Supreme Court limited imposition of the most extreme sentences for juveniles aged 18 and under. In *Roper v. Simmons* (2005) 543 U.S. 551 [125 S.Ct. 1183, 161 L.Ed.2d 1], the court held that the Eighth Amendment forbids the imposition of the death penalty on juvenile offenders who committed a capital offense when they were under 18 years old. The Supreme Court recognized juveniles as "categorically less culpable" than older criminals because of their lack of maturity and underdeveloped sense of responsibility, vulnerability to negative influences and outside pressures, and unformed character development. (*Id.* at pp. 569-570.)

In *Graham v. Florida* (2010) 560 U.S. 48 [130 S.Ct. 2011, 176 L.Ed.2d 825], the court went further, striking down juvenile sentences of life without the possibility of parole for nonhomicide

offenses. The problem with an LWOP sentence, the Supreme Court explained, is that "[t]he penalty forswears altogether the rehabilitative ideal. By denying the defendant the right to reenter the community, the State makes an irrevocable judgment about that person's value and place in society. This judgment is not appropriate in light of a juvenile nonhomicide offender's capacity for change and limited moral culpability." (*Graham*, *supra*, 560 U.S., p. 74.)

Next, in *Miller v. Alabama* (2012) 567 U.S. 460 [132 S.Ct. 2455, 183 L.Ed.12d 407] the Supreme Court held that mandatory sentences of life without the possibility of parole for juvenile offenders convicted of murder also violated the Eighth Amendment. *Miller* recognized that in the years since *Roper*, additional neurological studies confirmed, "adolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead, and risk avoidance" (*Miller*, *supra*, 567 U.S., p. 472, fn. 5), and that "adolescence" for this purpose extends into young adulthood, corroborating the Supreme Court's reasoning that young offenders cannot be held to the same level of moral and legal culpability as the average adult for whom penal statutes have generally been written.

The Supreme Court's consistent resort to behavioral and biological studies about juveniles compels application of its principle's regarding punishment beyond the age of 18. The juvenile brain does not magically transform into an adult brain when the clock strikes midnight on the defendant's 18th

birthday, something the court expressly noted in *Roper*. (*Roper*, *supra*, 543 U.S., p. 574.) While *Roper* relied on convention to draw the line at 18, research since then has established a sound basis for extending its principles, applied in both *Graham* and *Miller*, to young offenders up to the age of 25.

2. *People v. Caballero* (2012) 55 Cal.4th 262 and section 3051

In response to *Roper*, *Graham*, and *Miller*, this court took up the question of whether a term of 110 years to life imposed on a juvenile for a nonhomicide offense violates the Eight Amendment because it is the functional equivalent of life without the possibility of parole. (*People v. Caballero*, *supra*, 55 Cal.4th at 269 [a parole eligibility date that falls outside the juvenile offender's natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment].)

This court urged California lawmakers to "enact legislation establishing a parole eligibility mechanism that provides a defendant serving a de facto life sentence without possibility of parole for nonhomicide crimes that he or she committed as a juvenile with the opportunity to obtain release on a showing of rehabilitation and maturity." (*Caballero*, *supra*, 55 Cal.4th at p. 269, fn. 5.) Section 3051 was the Legislature's response, providing for a "youth offender parole hearing" that permits a defendant to present mitigating evidence of the impact of youth on his or her criminal history at an appropriate point in youth's term of incarceration. (Legis. Counsel's Digest, Sen. Bill 260 (2013-2014 Reg. Session), Summ. Dig., p. 2.)

The legislation first provided potential parole for youthful offenders under the age of 18. (Stats 2013 ch 312 § 4 (SB 260), effective January 1, 2014.) In 2016 section 3051 was amended to include those under 23 years of age, and in 2018 the Legislature raised the age for parole consideration to individuals age 25 or younger. (Stats 2015 ch 471 § 1 (SB 261), effective January 1, 2016; Stats 2017 ch 675 § 1 (AB 1308), effective January 1, 2018.)

Currently, a young offender's lengthy indeterminate sentence would, in most cases, make the offender eligible for parole under the following provision:

> A person who was convicted of a controlling offense that was committed when the person was 25 years of age or younger and for which the sentence is a life term of 25 years to life shall be eligible for release on parole at a youth offender parole hearing by the board during his or her 25th year of incarceration, unless previously released pursuant to other statutory provisions.

(§ 3051, subd. (b)(3).)

Subdivision (h) of section 3051, however, excludes youthful offenders sentenced under three specific circumstances:

> (h) This section shall not apply to cases in which sentencing occurs pursuant to Section 1170.12, subdivisions (b) to (i), inclusive, of Section 667, or Section 667.61, or 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. . . .

(§ 3051, subd. (h).)

3. The legislative adjustment from age 18 to 25 for parole consideration as a youthful offender is supported by multiple studies

The legislative increase in age from 18 to 25 for youth offender parole eligibility was supported by recent neurological studies which confirmed: "adolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead, and risk avoidance" (*Miller*, *supra*, 567 U.S., p. 472, fn. 5), and that "adolescence" for this purpose extends into young adulthood, corroborating courts' reasoning that young offenders cannot be held to the same level of moral and legal culpability as the average adult for whom penal statutes have generally been written. In other words, the juvenile brain does not magically transform into an adult brain when the clock strikes midnight on the defendant's 18th birthday, something the high court expressly noted in *Roper*. (*Roper*, *supra*, 543 U.S., p. 574.)

"Neurobehavioral, morphological, neurochemical, and pharmacological evidence suggests that the brain remains under construction during adolescence." (Arain, et al., *Maturation of the Adolescent Brain*, Nueropsychiatric Dis. and Treat., Apr. 3, 2013, v. 9, 449-461 [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3621648/#].) The term "adolescence" describes a term of years that differs depending on the system under examination. While hormonally, it may be complete in one's late teens, neurologically, it continues into the 24th year. (*Ibid*.)

"MRI studies have discovered that developmental processes tend to occur in the brain in a back-to-front pattern."

(Arain, *supra*.) The limbic system matures first, with the prefrontal cortex developing later. (Casey, et al., *The Adolescent Brain*, Anno. N.Y. Acad. Sci., Mar. 2008, 111-126 [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2475802/].) "The limbic system is a group of structures located deep within the cerebrum. . . . These brain regions are involved in the expression of emotions and motivation, which are related to survival. The emotions include fear, anger, and the fight or fight response. The limbic system is also involved in feelings of pleasure that reward behaviors related to species survival, such as eating and sex." (Arain, *supra*.) "Because adolescents rely heavily on the emotional regions of their brains, it can be challenging to make what adults consider logical and appropriate decisions." (*Ibid*.)

"The prefrontal cortex offers an individual the capacity to exercise good judgment when presented with difficult life situations." (Arain, *supra*.) It "is responsible for cognitive analysis, abstract thought, and the moderation of correct behavior in social situations." (*Ibid*.) "Following neuronal proliferation [just prior to puberty], the brain rewires itself from the onset of puberty up until 24 years old, especially in the prefrontal cortex." (*Ibid*.) "The prefrontal cortex is one of the last areas of the brain to reach maturation. . . ." (*Ibid*.)

The California Legislature, in passing the amendment to include youthful offenders up to and including age 25, expressly relied on such studies:

> The rationale, as expressed by the author and supporters of this bill, is that research shows that cognitive brain development continues into the early

> 20s or later. The parts of the brain that are still developing during this process affect judgment and decision-making, and are highly relevant to criminal behavior and culpability. (See Johnson, et al., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, Journal of Adolescent Health (Sept. 2009); National Institute of Mental Health, *The Teen Brain: Still Under Construction* (2011).) "The development and maturation of the prefrontal cortex occurs primarily during adolescence and is fully accomplished at the age of 25 years. The development of the prefrontal cortex is very important for complex behavioral performance, as this region of the brain helps accomplish executive brain functions." (https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3621648/ [as of April 20, 2017].)

(Senate Rules Com., Off. of Sen. Floor Analyses, 3d Reading Analysis of Assem. Bill No. 1308, as amended March 30, 2017, pp. 4-5.)

4. Mr. Williams's equal protection claim was rejected by the Court of Appeal

Mr. Williams was 24 years old at the time of the offenses in the instant case, and he was sentenced to a term of almost 200 years to life. There is no question that Mr. William's sentence is the functional equivalent of life without the possibility of parole, and had he been a juvenile at the time of the offense his sentence would unquestionably violate the Eighth Amendment. (*Caballero*, *supra*, 55 Cal.4th at p. 268; *People v. Contreras* (2018) 4 Cal.5th 349, 364.)

There is also no question that even though he was legally an adult at age 24, had he committed two homicides instead of

two sexual assaults, he would be eligible for a youth offender parole hearing after 25 years of incarceration pursuant to section 3051. Because, however, he was sentenced under section 667.61 he is statutorily excluded from parole consideration under section 3051, subdivision (h).

In his appeal, Mr. Williams challenged his exclusion from consideration of youthful parole as being in violation of the equal protection clause of the 14th Amendment to the United States Constitution and the California equal protection clause. (Cal. Const., art. I, § 7.) The Court of Appeal rejected the claim, finding instead that "the risk of recidivism provides a rational basis for the Legislature to treat violent felony sex offenders sentenced under the one strike law differently than murderers or others who commit serious crimes…." (*Williams*, *supra*, 4 Cal.5th at p. 493.)

This court should find the application of section 3051, subdivision (h), to exclude all persons sentenced pursuant to section 667.61 unconstitutional, and remand this case to the trial court for a proceeding to record evidence of the impact of youth on appellant's conduct as provided for in *People v. Franklin* (2016) 63 Cal.4th 261 and *In re Cook* (2019) 7 Cal.App.5th 393. (See *People v. Edwards* (2019) 34 Cal.App.5th 183, 199-200.)

B. Principles of Equal Protection

Both the federal and California Constitutions guarantee that no person shall be "den[ied] ... the equal protection of the laws." (U.S. Const., 14th Amend.; Cal. Const., art. I, §7.) In short, equal protection of the laws simply means that similarly situated

persons shall be treated in like manner unless there is a sufficiently good reason to treat them differently. (*People v. Morales* (2016) 63 Cal.4th 399, 408; *Engquist v. Oregon Dept. of Agriculture* (2008) 553 U.S. 591, 602 [128 S.Ct. 2146, 170 L.Ed.2d 975]; see *People v. Chatman* (2018) 4 Cal.5th 277, 289 ["our precedent has not distinguished the state and federal guarantees of equal protection for claims arising from allegedly unequal consequences with different types of criminal offenses"]; *Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 881 [federal and state equal protection guarantees have similar interpretation].)

This court recognizes that, "At core, the requirement of equal protection ensures that the government does not treat a group of people unequally without some justification." (*Chatman*, *supra*, 4 Cal.5th at p. 288, citing *People v. McKee* (2010) 47 Cal.4th 1172, 1207.) The extent of justification necessary "depends on the nature or effect of the classification at issue," with unequal treatment based on a "suspect classification such as race" being subject to the "'the most exacting scrutiny.'" (*Chatman*, *supra*, 4 Cal.4th at p. 288, quoting *People v. Wilkinson* (2004) 33 Cal.4th 821, 836.) Also subject to such strict scrutiny "is treatment affecting a fundamental right." (*Chatman,* at p. 288.)

"'Under the strict standard applied in such cases, *the state* bears the burden of establishing not only that it has a *compelling* interest which justifies the law but that the distinctions drawn by the law are *necessary* to further its purpose.'" (*Warden v. State Bar* (1999) 21 Cal.4th 628, 641, quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal. 3d 1, 17, emphasis in original.)

When personal liberty is at stake, a statutory scheme requires the application of strict scrutiny. (*In re Moye* (1978) 22 Cal.3d 457, 465; *McKee*, *supra*, 47 Cal.4th 1210.) A procedural statute that determines the length of incarceration infringes on "a fundamental interest, second only to life itself." (*People v. Nguyen* (1997) 54 Cal.App.4th 705, 716, quoting *People v. Olivas* (1976) 17 Cal.3d 236, 251. See also *Breed v. Jones* (1975) 421 U.S. 519, 530 [95 S.Ct. 1779, 44 L.Ed.2d 346].) ["commitment is a deprivation of liberty . . . incarceration against one's will, whether it is called 'criminal' or 'civil'" and "regardless of the purposes for which the incarceration is imposed"].)

Once a determination is made that a statute violates equal protection, courts must turn to remedies. Rather than strike a statute, a court may amend the legislation to expand its scope, which is a permissible judicial tool. (See, e.g., *Kopp v. Fair Pol. Practices Com.* (1995) 11 Cal.4th 607, 641 ["it is appropriate in some situations for courts to reform—i.e., 'rewrite'— enactments in order to avoid constitutional infirmity, when doing so 'is more consistent with legislative intent than the result that would attend outright invalidation.' ...[L]ike the high court, we have reformed statutes to preserve their constitutionality in cases concerning classification otherwise invalid under the equal protection clause"].)

C. Constitutional Principles of Equal Protection Require Youthful-Offender Parole Hearings for Similarly Situated Individuals

The exclusion of Mr. Williams from section 3051 violates his right to equal protection because he is similarly situated to other youthful offenders with respect to the law's legitimate purpose. (U.S . Const., amend 14; *Myers v. Ylst* (9th Cir. 1990) 897 F.2d 417 [disparate treatment of similarly situated defendants may violate equal protection clause of the 14th Amendment]; *In re Eric J.* (1979) 25 Cal.3d 522 530.)

There is no apparent basis for excluding Mr. Williams from the law's benefit in the legislative history of either the original or the more recently-amended version of section 3051. "Equal Protection does not require that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purpose for which the classification is made." (*Bastrom v Herold* (1966) 383 U.S. 107, 111 [86 S.Ct. 760, 15 L.Ed.2d 620].)

The purpose of section 3051 is to give youthful offenders "a meaningful opportunity to obtain release" after they have served at least 15, 20, or 25 years in prison (§ 3051, subd. (e)) and made "'a showing of rehabilitation and maturity.'" (*Contreras*, *supra*, 4 Cal.5th at 381.) When it first passed the bill that became section 3051, the Legislature expressed: "The purpose of this act is to establish a parole eligibility mechanism that provides a person serving a sentence for crimes that he or she committed as a juvenile the opportunity to obtain release when he or she has shown that he or she has been rehabilitated and gained maturity,

in accordance with the decision of the California Supreme Court in … *Caballero*[, *supra*,] 55 Cal.4th 262 and the decisions of the United States Supreme Court in *Graham* … [, *supra*,] 560 U.S. 48, and *Miller* … [, *supra*,] 183 L.Ed.2d 407." (Sen. Bill No. 260 (2013–2014 Reg. Sess.) § 1.)

1. Mr. Williams is similarly situated to those convicted of more serious offenses such as first degree murder

When 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. (Sen. Com. on Public Safety, Analysis of Sen. Bill No. 261 (2015–2016 Reg. Sess.) Apr. 28, 2015 [expanding eligibility to age 23]; Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 1308 (2017–2018 Reg. Sess.) as amended Mar. 30, 2017 [expanding eligibility to age 25].) Measured against this legislative purpose, youthful One Strike defendants are undeniably similarly situated with those who commit equally or even more serious offenses such as murder.

In *People v. Edwards*, *supra*, 34 Cal.App.5th 183, as in this case, the equal protection claim centered on the exclusion of otherwise eligible youth offenders who were convicted under section 667.61. (*Id.* at 192; § 667.61, subd. (a).) The *Edwards* court determined:

> One Strike rapists and first degree murderers, both aged 25 years or younger, are two groups of violent youthful offenders who seek the opportunity to demonstrate after extended terms of imprisonment that they should rejoin society. The two groups are, for purposes of section 3051, similarly situated.

(*Id*. at 195, quote marks and citation omitted.)

The *Edwards* court further explained that expansion of section 3051 to include 18 to 25-year-old defendants was the Legislature's acknowledgment that neuroscience research cited in *Miller*, *supra*, *Graham v. Florida* (2010) 0 U.S. 48 [130 S.Ct. 2011, 176 L.Ed.2d 825] and *Caballero*, *supra*, concerning the human brain showed that brain development continued into a person's mid-twenties. Thus, the scientific foundation for juveniles' cases applied equally to non-juvenile offenders otherwise eligible under section 3051. "Measured against this legislative purpose, youthful One Strike defendants are similarly situated with youthful first degree murderers, and the Attorney General does not attempt to argue otherwise." (*Id*. at 198.)

The only significant way that Mr. Williams is <u>not</u> similarly situated to a young person convicted of murder is murder that "defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers." (*Graham*, *supra*, 560 U.S. at p. 69, citing *Kennedy v. Louisiana* (2008) 554 U.S. 407 [128 S.Ct. 2641, 171 L.Ed.2d 525]; *Enmund v. Florida* (1982) 458 U.S. 782 [102 S.Ct. 3368, 73 L.Ed.2d 1140]; *Tison v. Arizona*

(1987) 481 U.S. 137 [107 S.Ct. 1676, 95 L.Ed.2d 127]; *Coker v. Geogia* (1977) 433 U.S. 584 [97 S.Ct. 2861, 53 L.Ed.2d 982].)

As stated by the Supreme Court, "Serious nonhomicide crimes 'may be devastating in their harm . . . but "in terms of moral depravity and of the injury to the person and to the public," . . . they cannot be compared to murder in their "severity and irrevocability."' (*Graham*, *supra*, 560 U.S. at 69, quoting *Kennedy*, *supra*, 554 U.S. at p. 438 and *Coker*, *supra*, 433 U.S. at p. 598.) Whatever reason offered by the People for punishment similar to what could be imposed for the first degree murder of five individuals, it cannot be that appellant's crimes were of comparable seriousness.

2. Mr. Williams is similarly situated to other youthful sex offenders, including recidivists, eligible for youth parole hearings

The Court of Appeal in this case held "the risk of recidivism provides a rational basis for the Legislature to treat violent felony sex offenders sentenced under the one-strike law differently than murderers or others who commit serious crimes," and rejected Mr. Williams's equal protection challenge to section 3051, subdivision (h). (*Williams*, *supra*, 47 Cal.App.5th at p. 493.) What the court did not explain, however, is why other sex offenders who *actually* are repeat sexual offenders are not excluded by section 3051, subdivision (h).

Only a very few specific youthful offenders are excluded from early parole consideration. They include young offenders sentenced under the Three Strikes law (§§ 1170.12; 667, subds.

(b)-(i)), those sentenced under the One Strike law (§ 667.61), or those sentenced to life without the possibility of parole if their crime was committed after turning 18 years old. (§ 3051, subd. (h).) Also excluded are offenders who are sentenced to life in prison for committing an additional crime for which malice aforethought is a required element after turning 26 years of age. (*Ibid*.) All other youthful offenders sentenced to lengthy terms are entitled to consideration for parole after no more than 25 years in prison. Including those sentenced as habitual sexual offenders pursuant to section 667.71.

Section 667.71 mandates a sentence of 25 years to life for "a person who has been previously convicted of one or more of the offenses specified in subdivision (c) and who is convicted in the present proceeding of one of those offenses." (§ 667.71, subds. (a)(b).) Among the list of 13 enumerated offenses listed in subdivision (c) of section 667.71 are the three offenses that for appellant, each carried a term of 25-years to life pursuant to section 667.61, subdivisions (a)(c)(d). (§ 261, subd. (a) (counts 3, 6); § 289, subd. (a) (count 4); § 288a, subd. (c) (count 5).) But because he was charged and convicted pursuant to section 667.61 instead of 667.71, he is denied the chance for parole after 25 years.

The offenses in this case occurred during two incidents separated by approximately 24 hours. Mr. Williams had no prior sexual offenses or serious prior convictions. And yet, if he was an actual recidivist and the state elected to prosecute him under the Habitual Sexual Offender law instead of the One Strike Law, he

would have received the same sentence, 100 years to life plus a determinate sentence, but he would have been eligible for parole consideration after 25 years. Just as he is less deserving of harsh punishment than a young offender who has committed murder, so too is Mr. Williams less deserving of harsh punishment than an actual recidivist who is a habitual sexual offender. The fear of recidivism does not provide a rational basis for exclusion from parole consideration when proven recidivism is not grounds for the same exclusion.

Others convicted of equally serious sex crimes are also allowed a youth parole opportunity while One Strike offenders are not. For example, the crime of sexual intercourse with a child 10 or younger – a crime carrying a sentence of 25 years to life (§ 288.7, subd. (a)), is not subject to the enhancements mandated by the one strike statute. (See § 667.61, subd. (c) [listing offenses subject to one strike sentencing].) A defendant aged 25 or younger could be convicted of this crime and still have a chance for a youth offender parole hearing after 25 years under section 3051, subdivision (b)(3). Similarly, a defendant convicted of other types of section 288.7 violations, such as sodomy, oral copulation, or sexual penetration of a child age 10 or younger would be eligible for a youth offender parole hearing after 20 or 25 years. (§ 3051, subd. (b)(2) & (b)(3); see § 288.7, subd. (a) & (b).) This is so even if the defendant suffered multiple convictions under section 288.7, with multiple victims.

By arbitrarily distinguishing between young adult one strike offenders and young adults convicted of other serious sex

offenses, section 3051 violates the Fourteenth Amendment's equal protection clause.

D. There is No Rational Basis for Excluding Appellant from a Section 3051 Parole Hearing

Even if young adult sex offenders recidivate at a higher rate than other types of young adult offenders, there can be no rational explanation for section 3051's disparate treatment between those convicted under the one strike statute and those convicted under section 288.7 or as habitual sexual offenders under section 667.71. But the reality is; there is no basis for the assumption that a youthful sex offender is more likely to recidivate and is less amenable to rehabilitation than other young offenders.

In *People v. Edwards*, *supra*, both defendants were 19 at the time of the offense and received sentences of 129 and 95 years for the sexual offense and use of a firearm with great bodily injury. (*Id.* at 186, 193.) The reviewing court found that there was no rational basis for exclusion from access to a youth offender parole hearing that existed within section 3051 itself and therefore the statute violated equal protection and was unconstitutional on its face. (*Id.*, 34 Cal.App.5th at 199.)

Edwards cited *People v. Contreras*, *supra*, which held that under the reasoning of *Graham v. Florida*, *supra*, and *People v. Cabarello*, *supra*, sentences of 50 and 58 years to life for juveniles violated the Eighth Amendment as such terms assumed the defendants were incorrigible and deprived them of a meaningful opportunity to obtain release. (*Contreras*, 4 Cal.5th at pp. 364,

366.) *Contreras* also cited *Graham* for the proposition that "incapacitation" measures intended to deter recidivism do not justify the sentences imposed on such juvenile offenders. (*Id.* at 366.) *Edwards*, following *Graham* and *Contreras*, explains that the crime most deserving of punishment is first degree murder, and that even child rape, though heinous, is less so deserving. (*Edwards*, 34 Cal.App.5th at 194-198.)

Faced with 19-year-old defendants convicted of numerous violent sexual crimes including several true findings under the One Strike law (§ 667.61) that the court had already found were similarly situated, *Edwards* could find no rational basis in the fact that section 3051 "makes youthful offender parole hearings available to intentional first degree murderers after 25 years of incarceration, while categorically denying them to One Strike sex offenders." (*Id.* at 197.) "[W]e conclude that this carve-out in section 3051, subdivision (h) violates principles of equal protection and is unconstitutional on its face. Because the law makes youthful-offender parole hearings available even to first degree murderers, it must, after 25 years of incarceration, offer the same" to the defendants. (*Id.* at 199.)

The statutory scheme violates equal protection because no "plausible basis exists for the disparity." (*Edwards*, *supra*, 34 Cal.App.5th at 196-197.) In *Edwards*, the Court of Appeal remanded "to the trial court for the purpose of determining whether [the defendants] were 'afforded an adequate opportunity to make a record of information that will be relevant to the Board' at a youthful offender parole hearing to be held during

their 25th year of incarceration. (*People v. Franklin*, *supra*, 63 Cal.4th 261, 286–287.)" (*Edwards*, *supra*, 34 Cal.App.5th at pp. 199-200.)

In the instant case, however, the Court of Appeal disagreed with the *Edwards* court that "there is no 'conceivable basis' supporting the disputed statutory disparity for such offenders, as compared to murderers." (*Williams*, *supra*, 47 Cal.App.5th at p. 492.) The court expressly found *Edwards's* reliance on this court's decision in *Contreras* is misplaced. First, *Williams* noted, "*Contreras* involved a constitutional challenge to LWOP sentences under the Eighth Amendment's prohibition of cruel and unusual punishment." (*Williams*, *supra*, 47 Cal.App.5th at p. 492.) "Second, and perhaps more important, *Contreras* only addressed the constitutional implications of juvenile offenders sentenced to LWOP." (*Id.*, at p. 493.)

Williams failed to acknowledge that this court in *Contreras* noted the Legislature's action in extending section 3051 first to the age of 23, then 25, and also commented on the potential equal protection problem that the exclusion of One Strike offenders presents. (*Contreras*, *supra*, 4 Cal.5th at pp. 382-383.) The *Williams* court also failed to address or recognize the ample research available to "negative every conceivable basis" to conclude that youthful sex offenders are more likely to commit additional sexual assaults than young offenders who commit murder or other serious offenses. (*Williams*, *supra*, 47 Cal.App.5th at p. 489.)

The Second District recently agreed with the lower court in this case that "there are significant public safety concerns that support the exclusion of these sex offenders from youth offender parole consideration, including recidivism." (*People v. Moseley*, *supra*, 2021 Cal. App. LEXIS 51, *15.) Despite use of the plural, "concerns," recidivism was the only concern mentioned, and the court quoted the Supreme Court as support for its conclusion: "The United States Supreme Court explained, '[w]hen convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault.'" (*Id.*, at *15, quoting *McKune v. Lile* (2002) 536 U.S. 24, 33 [153 L.Ed.2d 47, 122 S.Ct. 2017].) *Moseley* then concluded, "the risk of recidivism provides a rational basis for the Legislature to treat felony sex offenders sentenced under the One Strike law differently than murderers. . . ." (*People v. Moseley*, *supra*, 2021 Cal. App. LEXIS 51, *15-16, but see dissent at *16 (dis. opn. of Ashmann-Gerst, J.) ["section 3051's categorial exclusion of youthful One Strike offenders from its youth offender parole scheme violates equal protection"].)

There are several problems with the *Moseley* court's reliance on *McKune v. Lile* (*Lile*) as support for its conclusion that concern about recidivism provides a rational basis for disparate treatment of youthful One Strike offenders. First, there is nothing in *Lile* that differentiates between young offenders and fully mature adults. Second, *Lile* has nothing to do with denying offenders the opportunity for parole. In *Lile*, Supreme Court considered whether incentivizing the defendant to participate in

a pre-release rehabilitation program violated the defendant's Fifth Amendment privilege against self-incrimination. (*Lile*, *supra*, 536 U.S. at p. 29.) To complete the program, Lile would be required to discuss and admit responsibility for his offenses, as well as document all prior sexual activities, and the program staff was required to disclose any evidence of additional crimes to law enforcement officials. (*Id*. at p. 30.) Refusal to participate would result in a loss of privileges for the remainder of his term, which remained unchanged whether or not he completed the program. (*Id.* at pp. 30-30.) In a plurality opinion, the Supreme Court found no Fifth Amendment violation. (*Id.* at pp. 31-48.) Equal protection concerns played no part in the court's ruling.

Moseley's reliance on *Lile* is also misleading because the Kansas program at issue in *Lile* was for the purpose of rehabilitation and preventing recidivism upon release – it was not to deny release to one singled-out category of offenders. In California, such concerns are addressed with requirements for lifetime registration pursuant to section 290, as well as the potential for commitment and treatment for sexually violent predators pursuant to Welfare and Institutions Code section 6601. For someone such as Mr. Williams, the Supreme Court's concerns in *Lile* are addressed in the very fact that this is about the possibility of parole, which itself requires a showing of rehabilitation with no guarantee of release.

Ignored by both the lower court in the instant case and *Moseley* are the numerous long-term studies and research about recidivism of sex offenders in general and youthful offenders

specifically that largely debunk long-held assumptions about such offenders. For example, the United States Department of Justice published a research brief in 2015 which reviewed numerous studies undertaken over a 20-year period, which indicated that juvenile sex offenders were significantly less likely to reoffend with new sex offenses than their adult counterparts. (Lobanov-Rostovsky, *Recidivism of Juveniles Who Commit Sexual Offenses*, U.S. Dept. of Justice, Office of Sex Offender Sentencing, Sex Offender Management Assessment and Planning Initiative (SOMAPI) (July 2015), https://smart.ojp.gov/sites/g/files/xyckuh231/files/media/document/juvenilerecidivism.pdf.)

The SOMAPI paper found empirical evidence showing the recidivism rate of young offenders, ranging from 7 to 13 percent during the 5 years after release, is much lower than the 14 to 24 percent recidivism rate for adult offenders. (Lobanov-Rostovsky, *supra*, at p. 5.) This suggests "fundamental differences" between the two groups, particularly in the propensity of the younger offenders to reoffend. (*Ibid.*) The paper concludes:

> [A] a relatively small percentage of juveniles who commit a sexual offense will sexually reoffend as adults. The message for policymakers is that juveniles who commit sexual offenses are not the same as adult sexual offenders, and that all juveniles who commit a sexual offense do not go on to sexually offend later in life. As a result, juveniles who commit sexual offenses should not be labeled as sexual offenders for life, and sex offender management policies commonly used with adult sex offenders

> should not automatically be used with juveniles who commit sexual offenses.
>
> Finally, juveniles who commit sexual offenses have higher rates of general recidivism than sexual recidivism. This suggests that juveniles who commit sexual offenses may have more in common with other juveniles who commit delinquent acts than with adult sexual offenders, so interventions need to account for the risk of general recidivism. Intervention efforts should be concerned with preventing both sexual recidivism and general recidivism.

(Lobanov-Rostovsky, *supra*, at p. 5.)

Further, the Supreme Court's statement in *Lile*, "When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault," is misleading. (*Lile*, *supra*, at 536 U.S. at p. 33.) As pointed out in the study cited by the high court, "Released prisoners were often re-arrested for the same type of crime for which they had served time in prison." (U.S. Dept. of Justice, Bureau of Justice Statistics (1989) Recidivism of Prisoners Released in 1983, p. 6; https://www.bjs.gov/content/pub/pdf/rpr83.pdf.) "Thus, murderers were more likely than other offenders to be rearrested for a new homicide (6.6%), released rapists were more likely than other prisoners to be rearrested for rape (7.7%), released robbers to be rearrested for robbery (19.6%), and so forth." (*Ibid.*) However, those figures applied not to the overall recidivism rates of those offenders but the likelihood that if they did reoffend, it would be for a similar offense to what they had previously served time for. Overall, of the violent crimes

individuals were arrested for within three years after being released from prison, rape came last, behind murder and manslaughter, robbery, aggravated assault, burglary, larceny, and motor vehicle theft. (*Id.*, at p. 4.) Rape accounted for less than 1% of the crimes for which released prisoners were arrested for. (*Id.* at p. 6, table 9.)

What all of these studies show is that while recidivism is a legitimate concern for the Legislature to address across the board, there is no rational basis for singling out young One Strike offenders for harsher punishment than other serious and violent youthful offenders. This is particularly true when people like Mr. Williams are already singled out for monitoring, even after release from parole, for the rest of their lives.

In short, there is no rational basis for singling out one type of offender to exclude from parole eligibility when that offender's offenses are less serious and carry no higher risk of recidivism, than other youthful offenders who will be given the opportunity after 25 years to show maturity and rehabilitation.

E. Appellant's Case Should be Remanded to the Trial Court for Preparation and Preservation of the Record for a Future Youthful Parole Hearing Pursuant to Section 3051

Because Mr. Williams was presumed ineligible under operation of subdivision (h), a proper record for use at a future youth-offender parole hearing was not assembled at his sentencing. Mr. Williams attorney did not provide detailed information about characteristics and circumstances at the time of the offense, other than some basic facts related to age and

upbringing that were already part of the record. Thus, the current record is lacking information emphasizing Mr. William's "characteristics and circumstances at the time of the offense so that the Board, years later, may properly discharge its obligation to 'give great weight to' youth-related factors in determining whether the offender is 'fit to rejoin society' . . . ." (*Franklin*, *supra*, 63 Cal.4th at p. 284, internal citation omitted.) Like the defendant in *Franklin*, Mr. Williams did not have a fair chance to "place on the record any documents, evaluations, or testimony (subject to cross-examination) that may be relevant at his eventual youth offender parole hearing . . . or otherwise bears on the influence of youth-related factors." (*Ibid*.)

A *Franklin* hearing is particularly critical in this case, because what little information there is in the current record suggests important facts about Mr. William's upbringing and mental state that needs to be developed and documented. The probation report, for example, states that both his parents were "in and out of prison," and he was in foster care until age six, during which time he was sexually abused. (2 C.T. 504-505.) Appellant's mother had "schizophrenia and 'other disorders,'" and he was himself prescribed medication for an unknown diagnosis during much of his childhood. (2 C.T. 506.) In the days leading up to his arrest, appellant was self-medicating with Xanax and methamphetamine and believed he suffered from post-traumatic stress syndrome. (2 C.T. 506.)

The record, therefore, contains the bare outline of significant information about Mr. Williams's "characteristics and

circumstances at the time of the offense" that should be presented at a hearing "so the Parole Board, years from now, may properly discharge its obligation to 'give great weight to' youth related factors . . . in determining whether the offender is 'fit to rejoin society' despite having committed a serious crime." (*People v. Perez* (2016) 3 Cal.App.5th 612, 619-620, quoting *Franklin*, *supra*, 63 Cal.4th at p. 284.)

Remand to the trial court is the appropriate remedy for the purpose of giving Mr. Williams a sufficient opportunity to make a record of information relevant to his eventual youth offender parole hearing. (*Franklin*, *supra*, 63 Cal.4th at pp. 286-287; *Edwards*, *supra*, 34 Cal.App.5th at pp. 199-200.)

CONCLUSION

Based on the foregoing, appellant respectfully seeks reversal of the opinion of the Court of Appeal, and asks that his case be remanded to the trial court for a hearing in accordance with *People v. Franklin*, *supra*, to create a record that will be available for use in a future youth offender parole hearing to be held in accordance with section 3051.

Dated: February 12, 2021

Respectfully submitted,

NANCY J. KING
Attorney for appellant WILLIAMS

CERTIFICATE OF WORD COUNT

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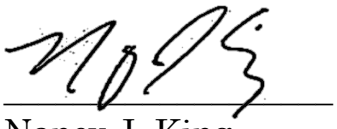

Nancy J. King

PROOF OF SERVICE BY MAILING AND ELECTRONIC SERVICE

Re: *People v. Williams* S262229

I, the undersigned, certify and declare:

I am over 18 years of age and not a party to this action. My business address is 1901 First Avenue, FL 1, San Diego, CA 92101. I served the APPELLANT'S BRIEF ON THE MERITS by placing a true and correct copy thereof in a sealed envelope with postage affixed thereto in the United States mail addressed to:

Jeremiah Williams – Appellant

I electronically served the PETITION FOR REVIEW to the following parties from my email address of njking51@gmail.com:

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Appellate Defenders, Inc.: eservice-court@adi-sandiego.com

San Diego Superior Court: Appeals.Central@SDCourt.ca.gov
Attention: Honorable Kenneth So, Judge

San Diego County District Attorney: DA.Appellate@sdcda.org

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Attention: Thomas Bahr, Deputy Public Defender

On this date I electronically filed the attached APPELLANT'S BRIEF ON THE MERITS via Truefiling. The Fourth District Court of Appeal, Division One was served per Supreme Court TrueFiling Policy.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: February 12, 2021

NANCY J. KING