

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

TONY HARDIN,

Defendant and Appellant.

S277487

Second Appellate District, Division Seven, No. B315434
Los Angeles County Superior Court, No. A893110
The Honorable Juan C. Dominguez, Judge

ANSWER TO PETITION FOR REVIEW

WILLIAM L. HEYMAN
Attorney at Law
State Bar Number 59021
3152 Big Sky Drive
Thousand Oaks, CA 91360
(805) 908-9931
william_l_heyman@msn.com

Attorney for Appellant,
Tony Hardin

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	3
ANSWER TO PETITION FOR REVIEW	5
INTRODUCTION	6
ARGUMENT	8
I. THIS COURT SHOULD DENY THE PEOPLE’S PETITION FOR REVIEW	8
A. <i>Williams</i> is not a proper lead case for a grant-and- hold grant of review in this appeal.	8
B. The Court of Appeal’s holdings in the Opinion referred to in this division B are correct.	11
C. The main sub-issue in the Opinion is not ripe for plenary review.	12
CONCLUSION	13
CERTIFICATE OF WORD COUNT	14
PROOF OF SERVICE	

TABLE OF AUTHORITIES

Page(s)

Cases:

People v. Acosta
(2021) 60 Cal.App.5th 769 11

People v. Bell
(2016) 3 Cal.App.5th 865 12

People v. Edwards
(2019) 34 Cal.App.5th 183 12

People v. Franklin
(2016) 63 Cal.4th 261 6

People v. Sands
(2021) 70 Cal.App.5th 193 11

People v. Williams
(2020) 47 Cal.App.5th 475
review granted July 22, 2020, S262229. 7-10, 12

California Statutes:

Penal Code section 3051 7-8, 11-12

Penal Code section 3051, subdivision (h) 6

///
///

**TABLE OF AUTHORITIES
(Continued)**

Page(s)

Other Authorities:

Appellate Courts Case Information, Supreme Court,
S262229, People v. Williams, Docket
<[https://appellatecases.courtinfo.ca.gov/search . . .](https://appellatecases.courtinfo.ca.gov/search)> 9

ANSWER TO PETITION FOR REVIEW

TO THE HONORABLE TANI G. CANTIL-SAKAUYE,
CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE
JUSTICES, OF THE SUPREME COURT OF CALIFORNIA:

Appellant, Tony Hardin, respectfully asks this Honorable Court to deny the People's petition for review in the above matter filed in this Court on November 28, 2022 under case number S277487 (the "Petition").

INTRODUCTION

On October 18, 2022, the Court of Appeal for the Second Appellate District, Division Seven (the “Court of Appeal”), filed its opinion in *People v. Hardin*, case No. B315434, certified for publication (“Opn.” or the “Opinion”). In the Opinion, the Court of Appeal reversed the order of the trial court denying appellant’s motion for a *Franklin*¹ hearing and remanded the cause with directions to schedule the hearing and to conduct all appropriate further proceedings not inconsistent with the Opinion. (Opn., at p. 25.)

The trial court had denied appellant’s above motion (in which appellant argued that Penal Code section 3051 (“section 3051”), subdivision (h) violated the equal protection clause of the Fourteenth Amendment (e.g., Opn., at p. 6)) on the basis that appellant was statutorily ineligible for a youth offender parole hearing, ruling that subdivision (h) of section 3051 was “not unconstitutional as applied to persons sentenced to life without the possibility of parole” (Opn., at p. 6.) (Subdivision (h) of section 3051 provides that an individual who received a sentence of life without the possibility of parole for an offense committed after attaining the age of 18 is not eligible for a youth offender parole hearing. (Opn., at p. 2.) Appellant was convicted by jury

¹ *People v. Franklin* (2016) 63 Cal.4th 261.

in 1990 in this case of special-circumstance felony murder for a crime committed when he was 25 years old. (Opn., at pp. 2, 5.) He was sentenced to a state prison term of life without the possibility of parole for that special-circumstance murder, and the judgment was affirmed on appeal. (Opn., at pp. 5-6.)

On this appeal, appellant argued in appellant's opening brief ("AOB") that the superior court erred, to his prejudice, in denying his motion for record development hearing, in part on the basis that section 3051 violates his constitutional right to equal protection (AOB 25-32).

In the Opinion, the Court of Appeal held that denying a youth offender parole hearing to individuals sentenced to life without parole for offenses committed when they were between the ages of 18 and 25 violates equal protection (Opn., at p. 13) and in that regard held in part that young adult offenders sentenced to life without parole are similarly situated to all other young adult offenders for purposes of section 3051 (Opn., at p. 17) and that there is no rational basis for distinguishing between young adult offenders sentenced to life without parole and other young adult offenders for purposes of section 3051 (Opn., at p. 19).

In the Petition, the People argue that the reasons for granting review are that this case should be held behind *People v. Williams* (2020) 47 Cal.App.5th 475 ("*Williams*"), review granted July 22, 2020, S262229 (the Petition, at p. 13), and, alternatively,

that this Court should grant review and conduct plenary review and resolve an important issue that has produced a conflict in published authority (the Petition, at p. 13). Those arguments or issues are responded to herein in turn.

ARGUMENT

I. THIS COURT SHOULD DENY THE PEOPLE’S PETITION FOR REVIEW

A. *Williams* is not a proper lead case for a grant-and-hold grant of review in this appeal.

In *Williams*, the defendant was convicted by jury in part of sex crimes against two women committed when he was 24 years of age and was sentenced to 100 years to life plus 86 years two months. (*Williams, supra*, 47 Cal.App.5th at pp. 478, 489.) On appeal, he claimed in part that his equal protection rights had been violated because he was statutorily ineligible for a youth parole hearing under section 3051 as a result of being a one-strike offender. (*Williams, supra*, 47 Cal.App.5th at pp. 478-479.) The reviewing court (Fourth Appellate District, Division One) rejected that claim and affirmed the judgment. (*Id.* at p. 479)

The reviewing court in *Williams* assumed for its analysis that the defendant had shown that he was similarly situated.

(*Williams, supra*, 47 Cal.App.5th at p. 489.) It concluded that it believed “that the threat of recidivism by violent sexual offenders—as demonstrated by the Legislature’s enactment of several comprehensive statutory schemes to curb such recidivism among such offenders—provides a rational basis for the Legislature’s decision to exclude one-strikers from the reach of section 3051. [Citations.]” (*Id.* at p. 493.) And: “Given the deferential standard we apply . . . and given our view 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, we reject defendant’s equal protection challenge to subdivision (h) of section 3051.” (*Ibid.*; and see *id.* at pp. 491-493, discussing the Legislature’s concern over recidivism of violent sex offenders.)

And this Court, in granting review in *Williams*, in framing the issue to be briefed and argued, limited the class of defendants to “young adults convicted and sentenced for serious sex crimes under the One Strike law (Pen. Code, § 667.61)” (Appellate Courts Case Information, Supreme Court, S262229, *People v. Williams*, Docket <<https://appellatecases.courtinfo.ca.gov/search> . . . >).

The instant case is very different. Unlike *Williams*, this is a life-without-the-possibility-of-parole case, and recidivism does not figure in this case. There is no indication that prior

criminality was alleged in this case. (E.g., Opn., at pp. 5-6). Appellant was a security guard at the time of his crimes in this case. (E.g., respondent's brief in this appeal, at pp. 10-11.)² The probation officer's report in this case indicates, with respect to prior record, (a) that appellant's juvenile record was that he admitted that at age 17 he was arrested for possession of marijuana and as a result he was ordered to pay an \$80 fine, and (b) that appellant had no adult history of crime. (1CT 19)

Therefore, the basis for the decision in *Williams*, that because of the Legislature's concern with respect to recidivism of violent sex offenders as demonstrated by its multiple related enactments, there was a rational basis for the Legislature's treating violent felony sex offenders differently from murderers or others who commit serious crimes (*Williams, supra*, 47 Cal.App.5th at p. 493), is absent from this case. Consequently, *Williams* is not an appropriate lead case for a grant-and-hold grant of review in this appeal, and the Petition should be denied.

² In AOB, appellant took the Statement of Facts verbatim from the Court of Appeal's nonpublished opinion in appellant's direct appeal in this case, case No. B051873, filed July 19, 1993 (e.g., AOB 11 & fn. 2). Appellant filed in conjunction with AOB, in the Court of Appeal, a motion to take judicial notice of pages 1 through 5 of that opinion and the contents thereof, and that motion was denied on April 7, 2022 as "unnecessary." Thereafter, that opinion was cited in respondent's brief in this appeal, on page 11, as the basis for the Statement of Facts.

B. The Court of Appeal’s holdings in the Opinion referred to in this division B are correct.

The Court of Appeal’s holding that young adult offenders sentenced to life without parole are similarly situated to all other young adult offenders for purposes of section 3051 (Opn., at pp. 17-19) is correct, and it has decisional backing (*People v. Sands* (2021) 70 Cal.App.5th 193, 202-203 [reviewing court assumed that young adult offenders sentenced to life without parole are similarly situated to young adult offenders sentenced to de facto life without parole for the purpose of section 3051]; *People v. Acosta* (2021) 60 Cal.App.5th 769, 772, 778-779 [holding that young adult LWOP (life-without-the-possibility-of-parole) offenders are similarly situated to young adult offenders sentenced to life for the purpose of section 3051]).

And the Court of Appeal’s holding that there is no rational basis for distinguishing between young adult offenders sentenced to life without parole and other young adult offenders for purposes of section 3051 (Opn., at pp. 19-25) is also correct. The Court of Appeal gave that sub-issue a long, thoughtful, well-reasoned discussion, pointing out the Legislature’s own statement of the goal of section 3051 (Opn., at p. 19) and what this Court has stated about a life without parole sentence (Opn., at p. 20), analyzing and refuting the bases on which courts have rejected the no-rational-basis argument (Opn. at pp. 20-24), and dealing

with the Attorney General's proceeding-incrementally suggestion (Opn., at pp. 24-25). The Court of Appeal's conclusions are sound.

Thus, the Court of Appeal's overall holding in the Opinion, that denying a youth offender parole hearing to individuals sentenced to life without parole for offenses committed when they were between the ages of 18 and 25 violates equal protection (Opn., at p. 13), is also correct.

Therefore, it would be inappropriate for this Court to grant plenary review in this matter, and the Petition should be denied.

C. The main sub-issue in the Opinion is not ripe for plenary review.

The main sub-issue in the Opinion, whether there is a rational basis for distinguishing between young adult offenders sentenced to life without parole and other young adult offenders for purposes of section 3051 (Opn., at pp. 19-25), has not been sufficiently developed in courts of appeal opinions to warrant review. No case has cited the Opinion. And the Court of Appeal did not cite in the Opinion at least one case on each side of that sub-issue (Opn., at pp. 19-25), unlike in, for example, *Williams* (*Williams, supra*, 47 Cal.App.5th at pp. 491-493 [discussing and contrasting the holdings in *People v. Edwards* (2019) 34 Cal.App.5th 183, on one side of the issue being decided in *Williams*, and *People v. Bell* (2016) 3 Cal.App.5th 865, on the

other side of that issue). This Court should await the filing of more courts of appeal opinions on both sides of the rational-basis sub-issue relating to defendants who as young adult offenders were sentenced to life without the possibility of parole before granting review on that sub-issue. Therefore, the Petition should be denied.

CONCLUSION

For the reasons set forth above, appellant respectfully asks this Honorable Court to deny the Petition.

DATED: December 19, 2022

Respectfully submitted,

WILLIAM L. HEYMAN
Attorney at Law

CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.504(d)(1) and (3), I hereby certify, in reliance on the word count of the computer program used to prepare this answer to petition for review, namely, WordPerfect X8, that the number of words in this answer to petition for review (including the footnotes, but excluding the cover information, the signature block, the tables, the proof of service, and this certificate) is 1,739.

DATED: December 19, 2022

Respectfully submitted,

WILLIAM L. HEYMAN
Attorney for Appellant,
Tony Hardin

PROOF OF SERVICE

Re: *The People v. Tony Hardin* (S277487)

I, William L. Heyman, certify:

I am over the age of 18 years, I am an active member of the State Bar of California, and I am not a party to this cause. My electronic service address is william_l_heyman@msn.com and my business address is 3152 Big Sky Drive, Thousand Oaks, CA 91360.

On December 19, 2022, I served the persons and entities whose names are set forth in A and B below with the within ANSWER TO PETITION FOR REVIEW (S277487APRHardin) in said action by:

- A. Transmitting a PDF version of that answer by TrueFiling electronic service or by e-mail to the e-mail service addresses provided below, except that I understand that Clerk, Court of Appeal was served with that answer automatically when I submitted that answer to Supreme Court of California electronically via TrueFiling on December 19, 2022):

Clerk, Court of Appeal
2d1.clerk7@jud.ca.gov

Office of the Attorney General
docketinglaawt@doj.ca.gov

Nima Razfar, Deputy Attorney General
Nima.Razfar@doj.ca.gov

George Gascón, District Attorney
truefiling@da.lacounty.gov

California Appellate Project
capdocs@lacap.com

and

B. Placing a true copy of that answer in each of two envelopes, addressed as follows, and then sealing said envelopes and depositing the same, with the postage thereon fully prepaid, in the United States mail at Thousand Oaks, California:

Clerk, Super. Ct., Crim. Div., for Del. to
Honorable Juan C. Dominguez, Judge
400 Civic Center Plz., Ste. 312
Pomona, CA 91766-3201

Mr. Tony Hardin E-56117 / B3-03-05U
SATF-CSP, Corcoran
PO Box 5248
Corcoran, CA 93212-5248

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Executed on December 19, 2022 at Thousand Oaks, California.

WILLIAM L. HEYMAN
Attorney at Law

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v.
HARDIN**

Case Number: **S277487**

Lower Court Case Number: **B315434**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **William_L_Heyman@msn.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
ANSWER TO PETITION FOR REVIEW	S277487APRHardin

Service Recipients:

Person Served	Email Address	Type	Date / Time
William Heyman Attorney at Law 59021	William_L_Heyman@msn.com	e-Serve	12/19/2022 2:39:21 PM
Nima Razfar Office of the Attorney General 253410	nima.razfar@doj.ca.gov	e-Serve	12/19/2022 2:39:21 PM
Office of the Attorney General	docketinglaawt@doj.ca.gov	e-Serve	12/19/2022 2:39:21 PM
George Gascon, District Attorney	truefiling@da.lacounty.gov	e-Serve	12/19/2022 2:39:21 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

12/19/2022

Date

/s/William Heyman

Signature

Heyman, William (59021)

Last Name, First Name (PNum)

William L. Heyman, Attorney at Law

Law Firm