

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**

OCT 14 2016

Jorge Navarrete Clerk

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

OPENING BRIEF ON THE MERITS

KAMALA D. HARRIS
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
JULIE L. GARLAND
Senior Assistant Attorney General
STEVE OETTING
Supervising Deputy Attorney General
TAMI FALKENSTEIN HENNICK
Deputy Attorney General
State Bar No. 222542
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9223
Fax: (619) 645-2012
Email: Tami.Hennick@doj.ca.gov
Attorneys for Plaintiff and Respondent

TABLE OF CONTENTS

	Page
Issue presented for Review	1
Statement of the Case	1
Summary of Argument	5
Argument	6
I. A prison sentence that affords a juvenile offender an opportunity for parole within his or her natural life expectancy is not the functional equivalent of life without the possibility of parole, and is therefore constitutional	6
A. A sentence of 50 years to life and 58 years to life imposed as to 16 year-old defendants is not the functional equivalent of LWOP because it affords the juvenile offenders an opportunity for parole within their natural life expectancy	7
Conclusion	11

TABLE OF AUTHORITIES

	Page
CASES	
<i>Graham v. Florida</i> (2010) 560 U.S. 48	<i>passim</i>
<i>Miller v. Alabama</i> (2012) 567 U.S. ____	<i>passim</i>
<i>People v. Caballero</i> (2012) 55 Cal.4th 262	<i>passim</i>
<i>People v. Franklin</i> (2016) 63 Cal.4th 261	5, 7
<i>People v. Mendez</i> (2010) 188 Cal.App.4th 47	9
<i>People v. Perez</i> (2013) 214 Cal.App.4th 49	7
<i>Plata v. Davis</i> No. 3:01-cv-01351-THE	9
STATUTES	
Penal Code	
§ 182, subd. (a)(1)	3
§ 207, subd. (a)	3
§ 261, subd. (a)(2)	3
§ 286, subd. (c)(2)(A)	3
§ 288a, subd. (c)(2)(A)	3
§ 289, subd. (a)(1)(A)	3
§ 654	4
§ 667.61	5
§ 3051	5, 6, 10
§ 3051, subd. (h)	7

TABLE OF AUTHORITIES
(continued)

Page

CONSTITUTIONAL PROVISIONS

United States Constitution, Eighth Amendment.....4, 8, 9, 10

OTHER AUTHORITIES

Board of Parole Hearings Elderly Parole Program, June 16,
2014 Memorandum 10

http://www.cdcr.ca.gov/BOPH/docs/Policy/Elderly_Parole_Program_Overview.pdf9

Nat. Center for Health Statistics, Centers for Disease Control
and Prevention, National Vital Statistics Reps., Vol. 63
No. 79

http://www.cdc.gov/nchs/data/nvsr/nvsr63/nvsr63_07.pdf

United States Life Tables, 2010, table A9

ISSUE PRESENTED FOR REVIEW

Is a total sentence of 50 years to life or 58 years to life the functional equivalent of life without the possibility of parole for juvenile offenders?

STATEMENT OF THE CASE

Jane Doe 1 and Jane Doe 2, ages 15 and 16, attended a party with Doe 1's parents at the home of one of Doe 1's relatives. At dusk, while the party was still going on, the girls went for a walk and sat down by a tree in an open space area. (3 RT 415, 420; 4 RT 546-548.) Appellants, Contreras and Rodriguez, both 16 years old, walked past them wearing dark clothing with hoods covering their heads. (3 RT 422; 4 RT 551.) A short time later, appellants tackled the girls from behind. Contreras tackled Doe 1 and Rodriguez tackled Doe 2. (3 RT 427-430, 470-473.) Contreras held a knife to Doe 1's throat. Appellants pulled the girls up and started taking them toward a street. Rodriguez covered Doe 2's mouth with his hand as she struggled to get away. Contreras repeatedly told Doe 1 to tell Doe 2 to "shut the fuck up." (3 RT 423-425, 428, 430, 470; 4 RT 551-554, 556, 560-562.) Appellants forced the girls to walk across the street, up an embankment, and into a wooded area. (3 RT 433, 470-473.)

Doe 2 continued to struggle and fight against Rodriguez. However, Doe 1, at Contreras's direction and with a knife to her neck, told Doe 2 to be quiet and stop resisting. Rodriguez tied a bandana around Doe 2's her mouth and told her he would hurt her if she screamed. (3 RT 425; 4 RT 553-554.) He took her to a dark and secluded area. Contreras took Doe 1 to a different location nearby. (3 RT 433, 470-473.)

Rodriguez took off Doe 2's shorts and underwear, got on top of her, put his penis in her vagina, and started thrusting in and out. (3 RT 433-438; 4 RT 470-473.) He told her not to scream or he would hurt Doe 1. (*Id.*) After what seemed like a long time to Doe 2, Rodriguez made her flip over.

As she lay on her stomach, he put his penis in her anus and started thrusting in and out. (*Id.*)

As Rodriguez was assaulting Doe 2, Contreras held a knife to Doe 1's throat and made her lay down. (4 RT 562.) He told her to keep her legs open, put his penis into her vagina, and started thrusting in and out. (4 RT 564-566, 568.) After a while, he took his penis out of her vagina, stood up, told her to suck it. (4 RT 567-568.) He put his penis in her mouth and pushed her head back and forth. (*Id.*) She gagged and threw up. (*Id.*) He then put his penis back into her vagina. (4 RT 568-569.) He told her to keep quiet and keep her legs open. (*Id.*)

Around this time, Rodriguez called over to Contreras and the two boys switched places. (3 RT 439; 4 RT 571.) Rodriguez vaginally raped Doe 1. (4 RT 574.) He then put his penis in her mouth and pushed her head back and forth. (4 RT 576.) He then put his penis into her anus. (4 RT 576.) After a couple of minutes, he put his penis in her mouth again and pushed her head back and forth. (4 RT 578-579.)

As Rodriguez was assaulting Doe 1, Contreras held the knife to Doe 2's neck as she lay on the ground. (3 RT 440-442.) He then put his penis into her vagina and started thrusting. (3 RT 442-443.) After some period of time, Contreras moved further up on Doe 2. (3 RT 443-444.) While holding the knife in his hand, he put his penis in her mouth and told her to suck it. (*Id.*)

At some point, Contreras asked Doe 2, "Did [Rodriguez] fuck your mouth?" (3 RT 447.) She told him no. (*Id.*) Rodriguez then brought Doe 1 over to the same place as Doe 2. (3 RT 448.) Once more, Rodriguez put his penis in Doe 1's mouth and pushed her head back and forth. (3 RT 448-449.)

Appellants instructed the girls to get dressed and warned them not to tell anyone about what had happened. (4 RT 476.) The girls walked down

the hill and to the street where they saw Doe 1's parents searching for them. (4 RT 481.)

A jury convicted Contreras of one count of conspiracy to commit kidnapping and/or forcible rape (Pen. Code,¹ § 182, subd. (a)(1); count 1); two counts of kidnapping (§ 207, subd. (a); counts 2 & 14), seven counts of forcible rape (§ 261, subd. (a)(2); counts 3, 5, 7-8, 15, 17 & 20), one count of rape by a foreign object with force (§ 289, subd. (a)(1)(A); count 4), eight counts of forced oral copulation (§ 288a, subd. (c)(2)(A); counts 6, 9, 11-13, 18-19 & 21), and two counts of sodomy by use of force (§ 286, subd. (c)(2)(A); counts 10 & 16).² Numerous enhancement allegations accompanied the sexual offense counts, including that the crimes were committed during a kidnaping, that they involved multiple victims, that a deadly weapon was used, personal use of a knife, and that the offenses were subject to the "one strike" law. (2 CT 431-464.). The jury found all of the accompanying enhancements applicable, except for the multiple victim enhancements for counts 4 and 5.

The prosecution charged Rodriguez with the same offenses and enhancement allegations, except for the weapon use enhancements. A separate jury convicted Rodriguez of counts 2, 8 through 12, 14 through 16, and 21, and found the accompanying enhancement allegations applicable.³

The probation report recommended Contreras serve 450 years to life, plus 68 years. The report noted that Contreras's crimes were egregious and will have lifelong effects on his victims, and that the lengthy sentence is the

¹ Further statutory references are also to the Penal Code unless otherwise stated.

³ The jury found Rodriguez not guilty of count 4. The jury could not reach unanimous verdicts on counts 1, 3, 5 through 7, 13, and 17 through 20. The court declared a mistrial as to these counts and later dismissed them without prejudice.

only assurance that Contreras will not have the opportunity to commit such crimes again. (4 CT 990-991.) The probation report recommended Rodriguez serve 200 years to life in prison, citing the same reasons. (6 CT 1821-1822.) The prosecutor acknowledged that such lengthy sentences would be unconstitutional under *People v. Caballero* (2012) 55 Cal.4th 262 (*Caballero*) [sentence for juvenile defendant convicted of a non-homicide crime that is the “functional equivalent” of a life without parole sentence violates the Eighth Amendment], and argued that appellants should be sentenced to a 25 years to life sentence for each victim, for a total term of 50 years to life. (4 CT 890-891; 6 CT 1668.) She submitted the National Vital Statistics Reports, which calculated the life expectancy for males in the United States to be 75.60 years, and 78.39 years for Hispanic males. (4 CT 893; 6 CT 1671.)

The court agreed with the prosecutor’s request and sentenced Rodriguez to a prison term of 50 years to life. The sentence consisted of consecutive terms of 25 years to life for counts 8 and 15. The court imposed concurrent terms for counts 9 through 12, 16, and 21. It stayed the sentences for counts 2 and 14 under section 654. (4 CT 969-972, 1326-1331.)

The court also sentenced Contreras to the prosecutor’s requested prison term of 50 years to life, but added an additional 8 years citing Contreras’s knife use during the assaults. The sentence consisted of consecutive terms of 25 years to life for counts 3 and 15, plus two consecutive 4-year terms for the weapon use enhancements accompanying those counts. The court imposed concurrent terms for counts 1, 4 through 13, and 16 through 21. It stayed the sentences for counts 2 and 14 under section 654. (6 CT 1864-1866, 1946-1948; 16 RT 2934-2935.) Hence, because Contreras would be eligible for parole at age 66, and Rodriguez

would be eligible for parole at age 74, a 50 years to life sentence would offer each appellant an opportunity for parole within his lifetime.

On appeal, appellants argued, among other things, that their sentences amount to cruel and unusual punishment because they were juveniles when they committed their crimes and their sentences do not provide them with a meaningful opportunity for parole in their lifetimes. The Court of Appeal concluded appellants' sentences constitute cruel and unusual punishment because they do not comply with the requirements set forth in *Graham v. Florida* (2010) 560 U.S. 48 (*Graham*) [prohibiting life without parole sentences for juvenile defendants convicted of non-homicide crimes], and *Caballero*, and remanded the matter for resentencing. It affirmed the judgments in all other respects.

On April 15, 2015, this court granted respondent's petition for review, deferring action pending consideration and disposition of *In re Alatraste*, S214652, *In re Bonilla*, S214960, and *People v. Franklin* (2016) 63 Cal.4th 261 (S217699). Following finality of *People v. Franklin* [availability of a youth offender parole hearing provides the inmate a meaningful opportunity for release within the juvenile's expected lifetime], and transfer for reconsideration orders in *Alatraste* and *Bonilla*, this court directed the parties in this matter to serve and file briefs addressing whether a total sentence of 50 years to life or 58 years to life is the functional equivalent of life without parole.

SUMMARY OF ARGUMENT

Appellants Contreras and Rodriguez each committed multiple horrific sexual offenses at the age of 16. The court sentenced them to 58 years to life and 50 years to life, respectively, pursuant to the One Strike law (§ 667.61). Penal Code section 3051 specifically excludes offenders sentenced under the One Strike law, thus, appellants are not entitled to section 3051's "youth offender parole hearings" that guarantee juvenile

offenders a meaningful opportunity for release on parole much earlier than their lengthy sentences would otherwise allow.

Nevertheless, a total term of imprisonment of 50 years or 58 years to life for multiple sexual offenses committed by a 16-year-old offender is constitutional even absent the relief afforded by section 3051 because the sentence provides the juvenile with an opportunity for parole within his or her natural lifetime, and accordingly, is not the functional equivalent of life without the possibility of parole.

ARGUMENT

I. A PRISON SENTENCE THAT AFFORDS A JUVENILE OFFENDER AN OPPORTUNITY FOR PAROLE WITHIN HIS OR HER NATURAL LIFE EXPECTANCY IS NOT THE FUNCTIONAL EQUIVALENT OF LIFE WITHOUT THE POSSIBILITY OF PAROLE, AND IS THEREFORE CONSTITUTIONAL

In *Graham*, the United States Supreme Court found unconstitutional the imposition of life without the possibility of parole (LWOP) sentences on juveniles for any crime other than homicide. (*Graham, supra*, 560 U.S. at p. 48.) Subsequently, in *Miller*, the United States Supreme Court held that states cannot impose *mandatory* LWOP sentences for defendants under 18 years of age, but acknowledged that such sentences were permissible for juveniles convicted of murder so long as the sentence imposed takes into consideration “how children are different.” (*Miller v. Alabama* (2012) 567 U.S. ____ [132 S.Ct. 2455, 2469, 183 L.Ed.2d 407].) *Miller* was decided in part on the determination that mandatory LWOP sentences for juveniles preclude consideration of the hallmark features of youth such as “immaturity, impetuosity, and failure to appreciate risks and consequences.” (*Id.* at p. 2468.) *Miller* left open the possibility for LWOP sentences in homicide cases, specifically those where the juvenile defendant committed crimes that reflect “irreparable corruption.” (*Id.* at p. 2469.)

In *Caballero*, this court recognized that *Miller* “requires sentencers in homicide cases ‘to take into account how children are different, and how these differences counsel against *irrevocably* sentencing them to a lifetime in prison,’” but left “‘*Miller*’s application in the homicide context to a case that poses the issue.” (*Caballero, supra*, 55 Cal.4th at p. 268, fn. 4, italics added.) This court also encouraged legislative action to address the issue: “We urge the Legislature 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.” (*Id.* at p. 269, fn. 5.)

This court, in *Franklin*, held that section 3051 brings juvenile sentencing in conformity with *Miller*, *Graham*, and *Caballero*, but expressed no opinion as to claims by juvenile offenders who are ineligible for a youthful offender parole hearing under section 3051, subdivision (h), or are serving lengthy sentences imposed under discretionary rather than mandatory sentencing statutes. (*Franklin, supra*, 63 Cal.4th at p. 280.)

A. A Sentence of 50 Years to Life and 58 Years to Life Imposed as to 16 Year-Old Defendants Is Not the Functional Equivalent of LWOP Because It Affords the Juvenile Offenders an Opportunity for Parole Within Their Natural Life Expectancy

Following *Miller*, *Graham*, and *Caballero*, “[t]he issue of how long someone under the age of 18 may be sentenced to prison has been the subject of considerable judicial attention.” (*People v. Perez* (2013) 214 Cal.App.4th 49, 55) (*Perez*). This court should adopt the following rule: any term of imprisonment that provides a juvenile offender with an opportunity for parole within his or her expected natural lifetime is not the functional equivalent of LWOP and is, therefore, constitutional even absent

consideration of the mitigating factors for juvenile offenders set forth in *Miller*.

As this court has held, the United States Supreme Court requires only that “a state must provide a juvenile offender ‘with some realistic opportunity to obtain release’ from prison *during* his or her expected lifetime. [Citation.]” (*Caballero, supra*, 55 Cal.4th at p. 268, quoting *Graham, supra*, 560 U.S. at p. 82, emphasis added.) Thus, “sentencing a juvenile offender for a nonhomicide offense to a term of years with 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.” (*Ibid.*, emphasis added.)

The focus for Eighth Amendment purposes, therefore, is on the possibility for parole at some point *during* the juvenile offender’s natural life expectancy, which this court has defined as “the normal life expectancy of a healthy person of defendant’s age and gender living in the United States.” (*Caballero*, 55 Cal.4th at p. 267, fn. 3.) And this focus is logical because, in shaping this area of the law, the high court noted the similarities between life in prison without parole and the death penalty. (See *Graham, supra*, 130 S.Ct. at p. 2027 [“[L]ife without parole sentences share some characteristics with death sentences that are shared by *no other sentences*. The State does not execute the offender sentenced to life without parole, but the sentence alters the offender’s life by a forfeiture that is irrevocable”], italics added.) Alternatively, a lengthy sentence with a parole date within the juvenile’s expected natural lifetime provides the juvenile an opportunity to demonstrate maturity and rehabilitation, thereby providing the juvenile with a meaningful opportunity for release. Unlike an LWOP sentence, a lengthy term of years sentence still gives the juvenile a chance to leave prison before life’s end and provides an incentive for the juvenile to become a responsible individual. (See *Graham, supra*, at p. 79.) Thus,

although the parole hearing date may fall towards the end of appellants' expected natural lifetimes, it is nonetheless a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.

(*Graham, supra*, at p. 845.) Accordingly, so long as a juvenile offender's parole eligibility date does not fall outside of his or her natural life expectancy, neither *Miller* nor the Eighth Amendment is implicated.

According to the most recent data available from the National Center for Health Statistics, the total life expectancy of a male in the United States is approximately 76.2 years. (Nat. Center for Health Statistics, Centers for Disease Control and Prevention, National Vital Statistics Reps., vol. 63 no. 7, *United States Life Tables, 2010*, table A⁴; see also *People v. Mendez* (2010) 188 Cal.App.4th 47, 62-63 [citing earlier version of report as source for the then-current life expectancy of an 18-year-old American male as 76 years].) Appellants were 16 years old when they committed their crimes. With a 50-year-to-life term, Rodriguez will be 66 years old when first eligible for parole, and Contreras will be 74 years old when first eligible for parole.⁵ Because it affords appellants an opportunity for parole within their

⁴ Available online at:

http://www.cdc.gov/nchs/data/nvsr/nvsr63/nvsr63_07.pdf

Respondent has separately requested that this court take judicial notice of this data.

⁵ Appellants may also be eligible for a parole hearing at 60 years of age under the CDCR's Elderly Parole Program. In order to comply with a court order from the three judge panel in *Plata v. Davis*, No. 3:01-cv-01351-THE, (a class-action alleging federal constitutional and statutory claims based on alleged inadequacies in the delivery of prison medical care), CDCR has implemented an elderly parole program in which inmates who are 60 years of age, and who have been incarcerated for a minimum of 25 years, or more are eligible for a parole hearing. (See Board of Parole Hearings Elderly Parole Program June 16, 2014 memorandum, available online at:

(continued...)

expected natural lifetimes, a sentence of 50 years to life and 58 years to life is not the functional equivalent of LWOP and therefore may be constitutionally imposed.

Nevertheless, the Court of Appeal reversed appellants' sentences, holding that because the sentences "preclude any possibility of parole until they are at the end of their lifetimes," the sentences "violate the Eighth Amendment under the standards articulated in *Graham*." (Opn. at p. 41.) Yet, *Graham* requires only that "a state must provide a juvenile offender 'with some realistic opportunity to obtain release' from prison *during* his or her expected lifetime." (*Graham, supra*, 560 U.S. at p. 82.) "A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime." (*Id.* at p. 75.) By imposing a sentence of 50 years to life and 58 years to life as to these 16-year-old defendants, the trial court sentenced them to a minimum term that does not exceed their natural life expectancy. Accordingly, even without a parole hearing after 25 years of incarceration as provided by Penal Code section 3051, a sentence of 50 years to life and 58 years to life is not the functional equivalent of LWOP and is, therefore, constitutional absent consideration of the mitigating factors for juvenile offenders set forth in *Miller*. (See *Miller, supra*, 132 S.Ct. at pp. 2467-2468, 2475 [Eighth Amendment prohibits sentencing a juvenile homicide offender to "mandatory" LWOP without considering the mitigating factors of youth]; cf. *Caballero, supra*, 55 Cal.4th at pp. 267-268

(...continued)

http://www.cdcr.ca.gov/BOPH/docs/Policy/Elderly_Parole_Program_Overview.pdf.)

Respondent has separately requested that this court take judicial notice of this memorandum.

[prohibiting a term-of-years sentence that amounts to the “functional equivalent” of LWOP].)

CONCLUSION

Respondent respectfully requests that this court hold that any term of imprisonment that provides a juvenile offender an opportunity for parole within his or her expected natural lifetime is not the functional equivalent of LWOP and is, therefore, constitutional even absent consideration of the mitigating factors for juvenile offenders set forth in *Miller*.

Dated: October 13, 2016

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
JULIE L. GARLAND
Senior Assistant Attorney General
STEVE OETTING
Supervising Deputy Attorney General



TAMI FALKENSTEIN HENNICK
Deputy Attorney General
Attorneys for Plaintiff and Respondent

CERTIFICATE OF COMPLIANCE

I certify that the attached **OPENING BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 3,022 words.

Dated: October 13, 2016

KAMALA D. HARRIS
Attorney General of California

A handwritten signature in black ink, appearing to read "Tami Falkenstein Hennick". The signature is cursive and includes a stylized flourish at the end.

TAMI FALKENSTEIN HENNICK
Deputy Attorney General
Attorneys for Plaintiff and Respondent

DECLARATION OF 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; my business address is 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266.

On October 13, 2016, I served the attached **OPENING BRIEF ON THE MERITS** on the merits by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Diego, California, addressed as follows:

Nancy J. King
Attorney at Law
1901 First Ave., Suite 138
San Diego, CA 92101
Attorney for Appellant Contreras

The Hon. Peter C. Deddeh, Judge
c/o San Diego Superior Court Clerk
220 West Broadway
San Diego, CA 92101-3409

Daniel J. Kessler
Attorney at Law
Kessler & Seecof, LLP
2254 Moore St., Ste. 201
San Diego, CA 92110
Attorney for Appellant Rodriguez

Bonnie M. Dumanis
District Attorney – San Diego County
Hall of Justice
330 West Broadway, Ste. 1300
San Diego, CA 92101

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 October 13, 2016, at San Diego, California.

Carole McGraw

Declarant



Signature

