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 REPLY BRIEF ON THE MERITS

NANCY J. KING
California State Bar No. 163477
1901 First Avenue, Fl. 1
San Diego, CA 92101
(858) 755-5258
njking51@gmail.com
Attorney for appellant WILLIAMS
By Appointment of the Supreme
Court of the State of California

TABLE OF CONTENTS

TABLE OF CONTENTS 2

TABLE OF AUTHORITIES 3

INTRODUCTION TO REPLY BRIEF 6

ARGUMENT 7

THE EXCLUSION OF ONE-STRIKE OFFENDERS FROM THE YOUTHFUL PAROLE SCHEME ADOPTED BY THE LEGISLATURE VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT 7

A. Strict Scrutiny Should Apply in Review of This Equal Protection Claim 7

B. The Exclusion of One-Strike Offenders from Parole Consideration Cannot Withstand Either the Strict Scrutiny or Rational Basis Tests 12

CONCLUSION 17

Certificate Of Word Count 18

Proof Of Service By Mailing And Electronic Service 19

TABLE OF AUTHORITIES

Cases

In re Moye (1978) 22 Cal.3d 457 ..... 7, 9

People v. Bell (1996) 45 Cal.App.4th 1030 10

People v. Chatman (2018) 4 Cal.5th 277 7

People v. Contreras (2018) 4 Cal.5th 349 10

People v. McKee (2010) 47 Cal.4th 1172 7

People v. Mitchell (1994) 30 Cal.App.4th 783 9

People v. Olivas (1976) 17 Cal.3d 236 ..... 8, 9, 10

People v. Owens (1997) 59 Cal.App.4th 798 9

People v. Silva (1994) 27 Cal.App.4th 1160 9

People v. Wilkinson (2004) 33 Cal.4th 821 ..... 7, 8, 9, 10

Statutes

Penal Code section 243, subdivision (b) 8

Penal Code section 243, subdivision (c) 7

Penal Code section 243.1 ..... 7, 8

Penal Code section 3051 ..... 6, 15

Penal Code section 3051, subdivision (h) 5

Penal Code section 667.61 ..... 5, 11

Welfare and Institutions Code, section 6600 11

Other Authorities

Ahluwalia, Civil Commitment of Sexually Violent Predators (2006) 4 Cardozo Pub. L. Pol'y & Ethics J. 489.....14

Beck & Shipley, U.S. Dep't of Justice, Recidivism of Prisoners Released in 1983 1, 6 (1989), at www.bjs.gov/content/pub/pdf/rpr83.pdf.....13

Bedarf, Comment, Examining Sex Offender Community Notification Laws (1995) 83 Cal. L. Rev. 885.....12, 13, 15

Furby et al., Sex Offender Recidivism: A Review (1989) 105 Psych. Bulletin 3.....13

Groth et al., Undetected Recidivism Among Rapists and Child Molesters (1982) 28 Crime and Delinq.....13

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).....15

Lave, Arizona's Sex Offender Laws: Recommendations for Reform (2020) 52 Ariz. St. L.J. 925.....14

Lewis, Report to the California State Legislature, Effectiveness of Statutory Requirements for the Registration of Sex Offenders (1988).....14

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 15

National Institute of Mental Health, The Teen Brain: Still Under Construction (2011) 15

Soothill & Gibbens, Recidivism of Sexual Offenders: A Re-Appraisal (1978) 18 Brit. J. Criminology 267 14

Constitutional Provisions

United States Constitution, Fourteenth Amendment 5, 6

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 REPLY BRIEF ON THE MERITS

INTRODUCTION TO REPLY BRIEF

This court asked the parties to address the question of whether Penal Code section 3051, subdivision (h) violates the equal protection clause of the Fourteenth Amendment by excluding young adults convicted and sentenced for serious sex crimes under the One Strike law (§ 667.61) from youth offender parole consideration, while young adults convicted of first degree murder are entitled to such consideration.

In the Appellant's Opening Brief on the Merits, Mr. Williams discussed the reasons why his exclusion from the statutory parole scheme violates the Fourteenth Amendment. Respondent disagrees and argues the exclusion of youthful one-strike offenders from section 3051 parole consideration does not violate equal protection because the Legislature had a rational basis for excluding such offenders, and that appellant's arguments to the contrary are unpersuasive.

Appellant addresses the primary arguments raised by respondent, but any underlying issues not discussed in the Reply Brief on the Merits are submitted on the authorities and arguments previously raised. The absence of additional comment on all aspects of the Attorney General's brief in this reply should not be taken as a concession of any nature. The effort to keep the briefing as concise as possible should not be seen as a lack of confidence in the merits of any individual point not addressed.

ARGUMENT

THE EXCLUSION OF ONE-STRIKE OFFENDERS FROM THE YOUTHFUL PAROLE SCHEME ADOPTED BY THE LEGISLATURE VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT

A. Strict Scrutiny Should Apply in Review of This Equal Protection Claim

In his Opening Brief, Williams asks this court to apply strict scrutiny because the issue involves the loss of personal

liberty, a fundamental interest. (ABOM 25-26, citing *In re Moye* (1978) 22 Cal.3d 457; *People v. McKee* (2010) 47 Cal.4th 1172; *People v. Chatman* (2018) 4 Cal.5th 277.) In the Respondent's answer, the Attorney General argues that the equal protection claim addressed here requires only a "'*rational* relationship between [the] disparity in treatment and some legitimate government purpose.'" (RABOM 23-26, quoting *Chatman*, *supra*, 4 Cal.5th at pp. 288-289, emphasis in original.)

Respondent's argument assumes that a youthful offender's liberty interest in a parole hearing after serving 25 years of a life sentence does not implicate a fundamental right. (RABOM 25.) Relying on this court's opinion in *People v. Wilkinson* (2004) 33 Cal.4th 821, respondent argues "[r]ational basis review governs such a claim because '[a] defendant . . . "does not have a fundamental interest in a specific term of imprisonment or in the designation a particular crime receives."' (*Id.* at p. 838.)

In *Wilkinson*, this court considered whether a statutory scheme that allowed for battery on a custodial officer that causes injury (§ 243, subd. (c)) to be potentially punished less severely than simple battery on a police officer when the defendant is convicted under section 243.1. Both offenses are "wobblers," punishable as either a misdemeanor or felony pursuant to section 1170 to county jail for not more than one year or imprisonment for 16 months, two, or three years. (*Wilkinson*, *supra*, 33 Cal.4th at pp. 830-831.) Wilkinson was convicted of battery on a custodial officer under section 241.1, and sentenced to formal probation for a period of three years. (*Id.* at p. 829.) The Court of Appeal

reversed, finding that the "statutory scheme pertaining to battery on a custodial officer violates equal protection principles. . . ." (*Ibid.*)

In reversing the Court of Appeal, this court in *Wilkinson* considered whether there was a liberty interest implicating a fundamental right in the existence of a statute that allowed for the *possibility* of a felony conviction, when the more serious offense involving actual injury allowed for the *possibility* of a misdemeanor sentence, when both offenses carry the same maximum. (*Wilkinson*, *supra*, 33 Cal.4th at pp. 830-842, emphasis added.) Also considered was whether there was an equal protection violation by the fact that the same offense, battery on a custodial officer without injury, could be charged as a straight misdemeanor pursuant to section 243, subdivision (b), or a wobbler pursuant to section 243.1. (*Ibid.*)

This court noted that California courts considering disparity in sentencing had never uniformly applied strict scrutiny solely on the grounds of "personal liberty" being a fundamental right and distinguished the case from *People v. Olivas* (1976) 17 Cal.3d 236, on which the defendant relied. (*Wilkinson*, *supra*, 33 Cal.4th at pp. 837-838 ["The language in *Olivas* could be interpreted to require application of the strict scrutiny standard whenever one challenges upon equal protection grounds a penal statute or statutes that authorize different sentences for comparable crimes, because such statutes always implicate the right to "personal liberty" of the affected

individuals. Nevertheless, *Olivas* properly has not been read so broadly."].)

Instead, this court rejected the idea that "'all criminal laws, because they may result in a defendant's incarceration, are perforce subject to strict judicial scrutiny.'" (*Wilkinson*, *supra*, 33 Cal.4th at p. 838, quoting *People v. Owens* (1997) 59 Cal.App.4th 798, 802; *People v. Silva* (1994) 27 Cal.App.4th 1160, 1167; *People v. Mitchell* (1994) 30 Cal.App.4th 783, 796 ["Determining gradations of culpability … does not implicate the strict scrutiny test for equal protection purposes."].)

What is clear from *Wilkinson* and the cases it discusses is whether or not discrepancies in a statutory scheme implicate a fundamental liberty interest subject to strict scrutiny, or whether it falls within legislative and law enforcement discretionary decisions in defining crimes and punishments depends on the circumstances. Appellant is not aware of a case in which this court has held that a loss of personal liberty will never implicate a fundamental right for purposes of equal protection review, and the principles outlined in prior cases requiring strict scrutiny have not be reversed. (See, *In re Moye*, *supra*, 22 Cal.3d at pp. 465-466 [the People concede that because the petitioner's personal liberty was at stake, strict scrutiny applied in considering whether confinement of an individual found not guilty by reason of insanity could exceed the statutory maximum]; *People v. Olivas*, *supra*, 17 Cal.3d at 251pp. 243-251 [fundamental right is implicated in deprivation of liberty when a statutory scheme allows for lengthier detention for a juvenile

committed to the youth authority than if the same crime had been committed by a person over the age of 21].)

While this court is appropriately reluctant to "'intrude too heavily on the police power and the Legislature's prerogative to set criminal justice policy'" (*Wilkinson*, *supra*, 33 Cal.4th at p. 838, quoting *People v. Bell* (1996) 45 Cal.App.4th 1030, 1049), neither has it ever reversed the position it took in *Olivas*, when it concluded that "personal liberty is a fundamental interest, second only to life itself, as an interest protected under both the California and United States Constitutions." (*Olivas*, *supra*, 17 Cal.3d at p. 251.)

The issue here does not involve interference with the Legislature's prerogative in setting varying criminal sentences for different crimes. Williams, age 24 at the time of his crimes, was sentenced to a determinate term of more than 86 years, plus 100 years to life. If he had been less than 18 years old instead of 24 at the time of the offenses, his sentence would in violation of the Eighth Amendment and reversed as cruel and unusual, and his sentence would have to allow for the possibility of parole. (*People v. Contreras* (2018) 4 Cal.5th 349, 364.) By enacting section 3051, the Legislature extended the same consideration to youthful offenders up to the age of 26, but did not change any underlying sentencing schemes.

Any judicial intrusion into the legislative function is minimal, but the liberty interest is profound. It recognizes the potential for demonstrating maturity and rehabilitation but provides no guarantee of release. The application of strict

scrutiny in this case would not force the People to provide a compelling reason for the term imposed because the term would remain unchanged. It does require a compelling reason for why one-strike defendants should be denied even the possibility of parole when similarly situated youthful offenders can work toward a possible release after 25 years of incarceration.

B. The Exclusion of One-Strike Offenders from Parole Consideration Cannot Withstand Either the Strict Scrutiny or Rational Basis Tests

As respondent notes, the Legislature has enacted and enhanced many laws in the last three decades that reflect a concern "that sex offenders present a greater risk of recidivism than offenders convicted of other types of serious felonies." (R.A.B.O.M pp. 26-27.) There is no question that was the motivation behind the enactment of the One Strike law, first enacted in 1994. (§ 667.61.) There is no discussion in the legislative history, however, on distinguishing between youthful offenders and mature adults who likely have a demonstrated history of predatory offenses.

Respondent also documents multiple other laws that address a concern for recidivism. (R.A.B.O.M pp. 28.) These include civil commitment after a prison sentence has been completed (Welf. & Inst. Code, § 6600 et seq.), and registration for life after release from custody (§ 290 et seq.). These are prophylactic remedies that would remain in place even if someone in appellant's position were able to gain release on parole after serving 25 years in prison.

According to respondent, the "Legislature's actions in this area were presumably informed by the widespread 'public perception' that 'recidivism is a more serious problem among sex offenders than other criminals.'" (RABOM p. 29, quoting Bedarf, Comment, Examining Sex Offender Community Notification Laws (1995) 83 Cal. L. Rev. 885, 893.) No doubt. But the more complete quote from the law review article cited by respondent calls into question whether "public perception" is sufficient to withstand scrutiny under any level of review: "Legislatures, courts, and advocates all agree that sex offender registration statutes are intended to address the high recidivism rate of sex offenders. But despite the public perception that recidivism is a more serious problem among sex offenders than other criminals, research on sex offenders in the past few decades reveals that recidivism for sex offenses is relatively low. That the public perception of recidivism rates is false or misleading is reason to question whether registration (and community notification) laws should exist." (*Ibid.*)

This case is not challenging registration and community notification laws. But the question does need to be answered whether "false or misleading" perceptions of recidivism rates provide a basis for excluding young One-Strike offenders from parole consideration after 25 years. Surely a false or misleading public perception cannot withstand strict scrutiny, but appellant submits that neither can the deprivation of an acknowledged liberty interest be rationally justified under the lesser standard.

It is not, as the Bedarf article points out, that recidivism among sex offenders is nonexistent. Rather, it is that it pales when compared to recidivism rates for other offenses. A 1989 U.S. Department of Justice study "found that rapists have a lower recidivism rate for the same offense than any other class of offender except murderers. While the rearrest rate for rape among previously convicted rapists was 7.7%, the rate for robbery among previously convicted robbers was 19.6%, for assault was 21.9%, for burglary was 31.9%, for larceny was 33.5%, and for drug offenses was 24.8%." (Bedarf, *supra*, at p. 896; Beck & Shipley, U.S. Dep't of Justice, Recidivism of Prisoners Released in 1983 1, 6 (1989), at www.bjs.gov/content/pub/pdf/rpr83.pdf.) The recidivism rate for murder was only slightly lower than for rape offenses at 6.6%. (*Ibid*.)

The similarity of recidivism rates between those convicted of murder and those convicted of rape calls into question any argument that "concern about recidivism" offers even a rational basis for the dissimilar treatment in section 3051.

The studies relied on by respondent to justify recidivism concerns as a rational basis for excluding One-Strike offenders from youthful parole consideration were all conducted in the 1980's and 1990's – 25 to 30 years ago. (RABOM pp. 29-31, citing Bedarf, *supra*; Beck & Shipley, *supra*; Furby et al., Sex Offender Recidivism: A Review (1989) 105 Psych. Bulletin 3; Groth et al., Undetected Recidivism Among Rapists and Child Molesters (1982) 28 Crime and Delinq.; Lewis, Report to the California State Legislature, Effectiveness of Statutory Requirements for

the Registration of Sex Offenders (1988); Soothill & Gibbens, Recidivism of Sexual Offenders: A Re-Appraisal (1978) 18 Brit. J. Criminology 267.) While these studies show that across the board, recidivist offenders are more likely to commit similar offenses to what they committed before, the studies do not show elevated levels of recidivism for sex offenders.

Respondent also acknowledges studies in more recent years "have argued that "the commonly held belief that sex offenders have a high rate of reoffending is not supported by the evidence." (RABOM 31-32 & fn. 17, citing Lave, Arizona's Sex Offender Laws: Recommendations for Reform (2020) 52 Ariz. St. L.J. 925, 926; Ahluwalia, Civil Commitment of Sexually Violent Predators (2006) 4 Cardozo Pub. L. Pol'y & Ethics J. 489, 494.)

Respondent assumes the Legislature will adopt new laws and amend current laws in response to newer and better research showing that those convicted of serious sex crimes are no more likely to commit similar crimes upon release than those convicted of equally or more serious offenses. (RABOM pp. 27, 32.) In making that assumption, respondent consigns an entire generation in appellant's position to facing a de facto term of life without the possibility of parole based on misguided public perception.

What is lacking from respondent's arguments is any argument or discussion of the more recent studies regarding youthful offenders which are discussed in Williams's Opening Brief, and which were considered by the California Legislature in passing the youthful offender parole provision in section 3051.

(O.B.O.M. pp. 21-23, 38-39, citing 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); see also 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 studies involved juveniles who had not reached the legal age of maturity. However, the Legislature enacted and amended section 3051 to include young adults up to the age of 26 upon consideration of studies regarding the adolescent brain, as cited above. Respondent offers no basis for excluding One-Strike offenders from section 3051 parole consideration that does not rely on the "false and misleading" perception that offenders such as appellant are more likely to be recidivists than other violent offenders. (Bedarf, *supra*, at p. 893.) Assumptions based on false and misleading public perceptions cannot be sufficient to withstand even rational basis review.

CONCLUSION

Based on the foregoing and Appellant's Opening Brief on the Merits, appellant respectfully asks for reversal of the opinion of the Court of Appeal.

Dated: July 8, 2021

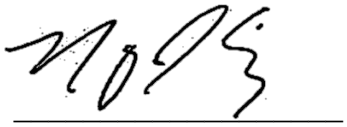
Respectfully submitted,

NANCY J. KING
Attorney for appellant WILLIAMS

Certificate Of Word Count

I certify that the word count of this computer-produced document, calculated pursuant to rule 8.520(c)(1) of the rules of court, does not exceed 8,400 words, and that the actual count is: 2,459 words.

Dated: July 8, 2021



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 REPLY 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 Reply Brief on the Merits to the following parties from my email address of njking51@gmail.com:

The Office of the Attorney General: SDAG.Docketing@doj.ca.gov

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

San Diego County Public Defender: ppd.eshare@sdcounty.ca.gov
Attention: Thomas Bahr, Deputy Public Defender

On this date I electronically filed the attached APPELLANT'S REPLY 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: July 8, 2021

NANCY J. KING