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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 ANSWER TO BRIEF OF AMICUS CURIAE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Constitutional Provisions

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

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INTRODUCTION

Appellant Williams submits the following Answer to the amicus curiae brief filed by the California District Attorneys Association (hereinafter CDAA) in this matter.

Penal Code[1] section 3051 creates a special parole process for people who were age 25 or younger at the time of their crimes, providing for a "youth offender parole hearing" and a "meaningful

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

opportunity to obtain release." (§ 3051, subds. (a)(d)(e).) For those convicted of the most serious offenses and sentenced to terms of 25 years to life and longer, the youth offender parole hearing is to take place during the 25th year of incarceration. (§ 3051, subd. (b)(3).) Youthful offenders convicted and sentenced as second or third-strike offenders (§§ 667, subds. (b)-(i), 1170.12) or as one-strike offenders (§ 667.61), are excluded from the opportunity provided by a youth offender parole hearing. (§ 3051, subd. (h).) This court is considering whether the exclusion of those convicted and sentenced for serious sex crimes under section 667.61 violates the equal protection clause of the Fourteenth Amendment, while young adults convicted of first degree murder are entitled to youth offender parole hearings after 25 years.

In its amicus brief, the CDAA argues that one-strike sex offenders and murderers are not similarly situated for equal protection purposes, and that the California Legislature had a rational basis for distinguishing between the two. Amicus concludes by arguing that even providing the opportunity for release on parole would break a promise to crime victims.

Appellant Williams addresses CDAA's concerns below, however any failure by appellant to respond to a particular argument should not be construed as a concession that amicus curiae's position is accurate. Rather, it reflects appellant's view that the issue was adequately addressed in appellant's prior briefing or the issue does not need to be addressed any further.

ARGUMENT

I

ONE-STRIKE OFFENDERS ARE SIMILARLY SITUATED TO MURDERERS FOR PURPOSES OF EQUAL PROTECTION ANALYSIS

In the amicus brief, CDAA discusses the rational basis test for reviewing an equal protection challenge, arguing that courts should apply a "very deferential standard," to review of a legislative measure, and that offenders who commit different crimes are generally not similarly situated. (Am.B. at pp. 13-14, citing *People v. Doyle* (2013) 220 Cal.App.4th 1251, 1266; *People v. Turnage* (2012) 55 Cal.4th 62, 74.)

These cases cited by respondent focus on the similarity of the crimes themselves, rather than on the age of the offenders and relative seriousness of the crimes. It is the latter which is at issue in this case. In *Doyle*, the Third District Court of Appeal determined that the legislature had a rational basis for making a current offense for driving under the influence a strike when the defendant has a prior conviction for manslaughter dui, while the same current dui is not similarly elevated by a prior *Watson*[2] murder conviction. The *Doyle* court recognized that while the *Watson* murder is more "morally blameworthy" than the manslaughter without malice, it was also punished in the first instance much more severely than the manslaughter. (*Doyle*, 220 Cal.App.4th at pp. 1265-1267.) The *Doyle* court found "some

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[2] *People v. Watson* (1981) 30 Cal.3d 290.

rationality" in a legislative "determination to punish murderers more harshly up front and to be more lenient with those convicted of manslaughter, while providing for harsher punishment for those convicted of manslaughter if they later commit a crime that shows they have not reformed." (*Id.* at p. 1268.)

The same analysis does not hold up in this situation, in which similar sentences may be imposed in the first instance for both murder and a one-strike offense, but the one who committed the more morally blameworthy offense, murder, may be given a meaningful opportunity for release following a youth offender parole hearing many years before the less blameworthy defendant. (*Graham v. Florida* (2010) 560 U.S. 48, 69 ["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."]; *Kennedy v. Louisiana* (2008) 554 U.S. 407, 438 [nonhomicide crimes, "even including child rape, . . . cannot be compared to murder in their 'severity and irrevocability.'"]; *People v. Contreras* (2018) 4 Cal.5th 349, 366, 382.)

In *People v. Turnage*, *supra*, this court considered whether a slight difference in elements for creating a wobbler offense in similar offenses violated the equal protection clause when it looked at the crime of planning a false weapon of mass destruction (WMD) (§ 11418.1) and making a false bomb report (§ 148.1). (*People v. Turnage*, *supra*, 55 Cal.4th 62.) The planting of a false WMD is a wobbler if the conduct caused another person to

be placed in sustained fear, while placement of a false bomb is elevated to a wobbler if it is done with the intent to cause fear to another. (§§ 148.1, subd. (d) & 11418.1.) This court noted that the statutory question involved "neither a suspect class nor a fundamental right," and needed to meet only minimum equal protection standards to survive the deferential rational basis review[3]. (*Id.* at pp. 74, 77.) This court then went on to discuss how the intent to cause fear may be more readily achieved by the placement of a false bomb, and the "inherent differences in the fearful perception of false bombs and false WMDs" that could "readily explain the differences in culpability and punishment" between the two statutes.

The analysis in *Turnage* is not helpful here. There is no disputing that murder is not similar to a section 667.61 offense on an elemental level. At the same time there is also no disputing that the potential sentences for each, with consecutive terms for multiple offenses and enhancements are virtually indistinguishable in that both can lead to terms of incarceration which cannot be served in a defendant's lifetime, or a meaningful opportunity for release. (See, *People v. Franklin* (2016) 63 Cal.4th 261; *People v. Contreras*, *supra*, 4 Cal.5th 349.)

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[3] Throughout its brief, amicus counsel assumes without discussion that the deferential rational basis standard applies to the question presented in this case. Appellant argued in his Brief on the Merits and Reply Brief that his liberty interest involved a fundamental right and strict scrutiny applies. (AOBM 25-26; ARBOM 7-12.) He does not concede otherwise here.

Unlike any cases discussed by amicus counsel, what makes appellant similarly situated to other serious offenders who are entitled to a youthful offender parole hearing pursuant to section 3051 is his age at the time of the offense. No discussion of the seriousness of his current offense can avoid the undeniable conclusion that appellant's exclusion from parole consideration is based upon commission of a lesser offense than an offense that is eligible for youthful parole.

Amicus counsel nevertheless attempts to buttress his arguments with anecdotes apparently based on prosecutorial experience, but without citation to supporting data or authority. Stating, for example, "Experience has shown that sex offense victims fear murder after the completion of the sexual acts due to a desire on the defendant's part to silence them as a victim and witness, and again, many years later as an act of revenge for incarceration." (Am.B. at p. 19, fn 4.) Presumably amicus's experience also shows the same for the victims of any number of violent crimes, not just sexual assault. Further, the statement if anything buttresses the primary problem being addressed in this case, which is there is no crime more serious than the ultimate act of murder. Amicus does not explain why a person who commits a violent assault in which the victim is fearful of being killed is justifiably punished more severely than the defendant who actually kills.

Amicus goes on to explain that the victim of sexual assault has "[h]er sense of security shattered, and the sanctity of the home is in question." (Am.B. at p. 19.) Again, there is no

discussion of how these offenses are justifiably distinguished from others that occur inside a home. Indeed, it is the reason the crime of residential burglary (§ 460, subd. (a)) is a serious felony and strike offense within the meaning of sections 1192.7, subd. (c)(18) and 667, and a violent felony (§ 667.5, subd. (c)(21)) if the victim is present at the time of burglary. (*People v. Davis* (1998) 18 Cal.4th 712, 720-722 and fn 4, quoting 4 Blackstone's Commentaries 223 [authorities have always regarded burglary as a "very heinous" violation of the "sanctity" of the home, noting the "abundant terror that naturally carries with it. . . ."].)

Amicus does briefly "recognize" that "both offenders are 'youthful' as defined by the law." (Am.B. at p. 20.) Even so, according to amicus, "the crimes differ from each other in so many aspects 'including the reasons and motive of the criminal, the outrage and harm to the victim, and the *potential for danger* to the victim and society in general.' (*People v. Macias* (1982) 137 Cal.App.3d 465, 473, emphasis added.)" (Am.B. at p. 20.) The emphasis by amicus of the "potential for danger" is presumably based the distinction made earlier between a "living, breathing, suffering" victim of sexual assault and the murder victim who has been silenced forever. (*Ibid.*)

Amicus concludes that even taking the defendants' youthfulness into consideration, the difference classes of crime between murderers and violent sex offenders are "like apples and oranges." (AmB. at p. 21.) In a footnote, amicus asserts that youthful first-degree murderers can potentially achieve rehabilitation, but the "same cannot be said about demented,

aberrant, albeit youthful sexual offenders." (Am.B. at p. 21, fn 5.) The statement is apparently offered solely on the basis of the author's anecdotal experience as a prosecutor, in which he has apparently never failed to oppose parole for a convicted sex offender. (*Ibid*.) This court should not entertain such unsupported hyperbole. (*People v. Crittenden* (1994) 9 Cal.4th 83, 153 ["we do not consider points unsupported by authority or argument"]; *People v. Waidla* (2000) 22 Cal.4th 690, 742 ["To utter the words simply does not create the reality"].)

II

THE LEGISLATURE HAD NO RATIONAL BASIS FOR EXCLUDING YOUTHFUL ONE-STRIKE OFFENDERS FROM CONSIDERATION FOR PAROLE AFTER SERVING 25 YEARS

Amicus goes on to argue that even if appellant is similarly situated as a murderer for purposes of equal protection, the California Legislature had a rational basis for the distinction. (Am.B. pp. 22-25.) Amicus does not attempt to argue there is a compelling reason for the distinction, which must be found under a strict scrutiny analysis. (*Kalser v. Lockyer* (2000) 23 Cal.4th 472, 480.) However, if this court disagrees with appellant on the appropriate standard of review, there still must be a rational basis for the excluding appellant from youthful parole consideration, and amicus does not show any such justification.

Amicus counsel cites to cases justifying increased sentences and enhancements for violent sex offenses in general, and simply

assumes what is true for an adult offender is also true for youthful offenders. (Am.B. 24-25, citing *People v. Karsai* (1988) 131 Cal.App.3d 224, 242.) Amicus is wrong.

In *Karsai*, the Court of Appeal determined that California's sentencing scheme for violent sexual offenses did not violate equal protection of the law. (*Karsai*, *supra*, 131 Cal.App.3d at pp. 243-244.) The Court noted that section 667.6 was directed at recidivism and multiplicity of offenses, and that "the Legislature could rationally conclude that those matters present a special problem and danger to society in sex offense cases and that they merit special treatment." (*Id.* at p. 244.) Appellant does not dispute the premise as it relates to violent sex crimes in general, or even as to the sentence imposed in the current case. As previously noted, the question here is whether the Legislature has any rational basis for excluding youthful offenders like appellant from parole consideration after serving a full 25 years of their sentence, when it has recognized developments in brain showing youthful offenders to not only be less culpable than older offenders, but also more amenable to rehabilitation. There is no rational basis for a distinction between appellant and those who have committed a violent first degree murder.

III

ALLOWING YOUTHFUL PAROLE HEARINGS PURSUANT TO SECTION 3051 DOES NOT VIOLATE MARSY'S LAW

Finally, amicus argues that consideration for crime victims alone justifies a finding of a rational basis for upholding section 3051, subdivision (h). (Am.B. 26-28.) Nothing about Marsy's Law or the Victims' Bill of Rights is implicated in the issue presented here. (Cal Const, Art. I § 28.)

The finality of the sentence imposed is not at issue. With a minimum term of 25 years before even being considered for parole, there is no concern appellant will not be sufficiently punished. Section 3051 expressly states that the section is not intended to alter the rights of victims at parole hearings, and whenever that parole hearing occurs, the victims in this case would presumably be notified and given the opportunity to express their views. (§ 3051, subd. (f)(3).)

As noted by amicus (Am.B. at p. 27), this court considered the ramifications of Marsy's Law in *In re Vicks* (2013) 56 Cal.4th 274, and nothing about the outcome in *Vicks* impacts the decision to be made here. If, after 25 years and a youthful offender parole hearing in accordance with section 3051, appellant is found to not be rehabilitated and amenable to release, a future time for a subsequent parole hearing shall be set for up to 15 years in the future, as required by Marsy's Law. (§ 3051, subd. (g); § 3041.5, subd. (b)(3).)

It is not within the realm of rational speculation that the Legislature determined California's parole system is less able to

determine the rehabilitation and prospects of a young person convicted of a violent sexual assault, than for a violent first degree murderer.

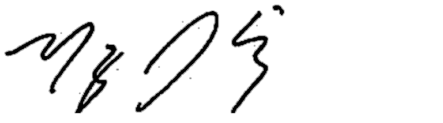
There will be no broken promises to crime victims if appellant is given the opportunity of a youth offender parole hearing after 25 years in custody.

CONCLUSION

Based on the foregoing and Appellant's Opening and Reply Briefs on the Merits, appellant respectfully asks for reversal of the opinion of the Court of Appeal, and find the exclusion of offenders convicted pursuant to section 667.61 violates the Equal Protection Clause of the Fourteenth Amendment.

Dated: October 25, 2021

Respectfully submitted,



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Dated: October 25, 2021

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