S262229

SUPREME COURT
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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

The People of The State of California, Plaintiff and Respondent, v. Jerimiah Williams, Defendant and Petitioner.	Supreme Court No. S262229 BRIEF OF AMICUS CURIAE TREVOR JOHNSON AND KENNETH MOORE IN SUPPORT OF PETITIONER'S PETITION FOR REVIEW

I. Interest of Amici.

Amici are inmates serving sentences of both life with and without the possibility of parole in the custody of the Director of Corrections and Rehabilitation. Amici will face the possibility of an appearance before the Board of Parole Hearings to determine suitability for parole. Amici currently possess a tangible liberty and dignity interest identical to that of petitioner Mr. Williams.

As current inmates, Amici have a true working knowledge and real life understanding of the issues presented in this proceeding and the significance of this Court's decision.

This Court's pending decision will have direct bearing on the rest of our lives and we respectfully offer our views as friends of the Court.

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IS A SENTENCE OF LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE SYNONYMOUS WITH THE DETERMINATION OF INCORRIGIBILITY FOR THE PURPOSE OF EQUAL PROTECTION ANALYSIS

Applicant writes to offer this perspective, the view of one actually serving a life sentence, on what does or does not actually separate LWOP from other inmates serving life in prison. Much has already been spoken by minds more learned; appellate justices have even expressed a need for this Court to settle the question of whether LWOP offenders age 18-25 are improperly excluded from §3051(h) proceedings.

This Court's decisions in IN RE COOK (2019) 7 Cal. 5th 439 and PEOPLE v. FRANKLIN (2016) 63 Cal. 4th 261 provide guidance and insight:

> "Accordingly, Franklin was 'not subject to a sentence that presumes his incorrigibility; by operation of law he is entitled to a parole hearing and possible release after 25 years of incarceration.'" (COOK, supra, at 449; citing FRANKLIN, supra, at 281.)

There is no debate that every criminal sentence carries with it some implicit understanding that an offender, to the extent held accountable by the law, has been incorrigible. What is not settled by either the Districts, the Legislature, or by this Court is what makes an offender serving an LWOP sentence any more incorrigible than the offender serving a sentence of 125 years before eligibility for parole. Although Penal Code §190.2 special circumstances are called special for a reason, the statute contains no provision for either the judge or jury to make the concurrent finding - ala Judge

Joe Brown, "I hereby declare you pitiful."

We pray the enclosed letters of commutation betray any notion of incorrigibility. Candidates face the reality before facing the Governor. Incorrigibility or implicit findings therefore, should not be the dividing line separating 18-25 year-olds serving an LWOP sentence from those 18-25 year-olds serving hundreds of years with an equally unrealistic prospect of a hearing. For, in whatever the incorrigibility may exist, amici and Court cannot ignore: when this Court sat as trial judges sentencing offenders to hundreds of years to parole, not one justice actually contemplated a hearing would be held.

Neither did the Legislautre.

Moreover, amici challenges any justice to opine that, when sitting as trial judges, it was reasonable to believe sentencing offenders to hundreds of years <u>without</u> life meant a single person would be released even without a hearing.

What the growing number of appellate justices may now undertstand is what this Court said over 35 years ago in PEOPLE v. RODRIGUEZ (1986) 42 Cal. 3d 730:

> "[T]he sentencing function is inherently moral and normative, not factual; the sentencer's power and discretion under both the 1978 and 1977 provisions is to decide the appropriate penalty for the particular offence and offender under the relevant circumstances." (Id., 540-545.)

Not only is sentencing moral and normative, with regards to §190.2, it is also discretionary. §190.2(a) only requires sentencing

"if one or more of the following special circumstances has been found..." (Id.; accord also, par.(c),(d).) Contrast this to the mandatory provisions of the Three Strikes Law: "The prosecution shall plead and prove all known prior serious and/or violent felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior serious and/or violent felony conviction allegation except as provided in paragraph (2) of subd. (d)."

This creates two issues of a constitutional dimension. First, if the Legislature meant to deny equal protection of §3051 (b)-(h)to 18-25 year old LWOPs based on a discretionary decision of the prosecution, it may run afoul of the Separation of Powers doctrine because incorrigibility is not a question of fact a jury must decide but a bargaining chip the prosecutor may use at pleading.

Second, the data now available clearly indicates life and LWOP sentencing is a sanction almost exclusively reserved for people of color. According to the 2021 report No End in Sight: America's Enduring Reliance on Life Imprisonment (Ashley Nellis Ph.D.), p.18, nationwide, approx. 55 percent of LWOP sentences are being served by Blacks. And according to the 2021 report of The Commission to Revise the Penal Code, 79 percent of individuals serving LWOP in California are people of color. 1/

But to simply argue a penal law should be overturned as

1/ Com. on Rev. of Pen. Code, 2021 Annual Report [CRPC 2021 Ann. Rpt], pp. 50-51 [http//www.clrc.ca.gov/CRPC].

racist may be praying this Court indulge in a judicial activism not seen since Rose Bird. Nor does this applicant intend to use the privilege of appearing amicus curiae to simply play a race card. But this applicant does stand firm that in this State's card game of justice, integrity and constitutionality demand that the cards be played face up.

Appellant prays this Court will grant leave to join the argument that §3051(b)-(h) exclusion of 18-25 year old LWOP offenders from parole eligibility violates equal protection guarantees because there is no judicial or factual finding implicit in the sentence which differentiates the LWOP sentence with respect to the science leading to the law in the first instance.

ARE OFFENDERS SERVING LIFE WITHOUT THE POSSIBILITY OF PAROLE TREATED DIFFERENTLY IN THE JUSTICE SYSTEM SO THAT THEY ARE NOT SIMILARLY SITUATED WITH RESPECT TO THE LAW

This applicant offers the perspective of one actually serving a sentence of life in prison. From this side of criminal justice, whether a "rational relationship between the disparity of treatment and a legitimate governmental purpose" exists in our sentencing is academic ether. 2/ So that the person of color who receives an LWOP sentence receives no pity from the White person

2/ Cited from People v. Edwards (2019) 34 Cal. App. 5th 183, 197.)

serving a 200 year sentence, until now.

With unqualified certainty, the Department of Corrections and Rehabilitation is as disinterested in the disparity of treatment as they are in rehabilitation.

For decades, offenders and their advocates have been portrayed as scheming insincere thugs supported by soft on crime enablers. The prison industry and a sympathetic legislature has traded in this currency for decades. But what they've hidden from from view is how offenders deemed the worst of the worst, serving a sentence that "offers no life outside prison"3/ find themselves suitable for release on parole.

A. The Regulations.

At the outset, once incarcerated, CDCR regulations do not relieve LWOP offenders of the obligation to work for them:

> "Every able-bodied person committed to the custody of the [secretary] is obligated to work as assigned by the Department..."
> (C.C.R. Title 15, Art. I, §3040(a).)

However, LWOP offenders are systematically excluded from state-funded rehabilitation and treatment like Cognitive Behavioral Therapy (CBT, now ISU-DT), the Long Term Offender Program (Id., §3040.2); statutorily excluded from receiving Rehabilitative Achievement Credit (§3043.4), Educational Merit Credit (§3043.5), and Exceptional Conduct Credit (§3043.6). This credit is not even prorated so if an

3/ Brown, Commutation of Sentence, Kenneth Jordan, encl.

LWOP offender receives relief they will receive credit for completed effort.

LWOP offenders are assigned the Inmate Custody Level Close Custody. (Id., §3377.2(b) et. seq.)4/ Close Custody inmates are generally not permitted to participate in program assignments or activities scheduled after 4:00 p.m., or located outside the Facility perimeter. This excludes almost all LWOP offenders from participating from both inmate-led or group-sponsored programs because they customarily meet in the evenings after assigned work/training.

LWOP offenders are housed at security level IV Facilities. Level IV housing is the highest level.5/ Level IV housing is reserved for inmates who (1) participate in riots, (2) belong to security threat groups (prison gangs), (3) exhibit repeated assaultive behaviors, or (4) are an otherwise ongoing threat to institutional security.5/

B. The Reality.

In 2008, this Court denied review of the Third District decision in CALIFORNIA CORRECTIONAL PEACE OFFICERS ASSOCIATION v. SCHWARZENEGGER, 163 Cal. App. 4th 802. In its opinion, the court recounted Gov. Schwarzenegger's statement that the CDCR was housing 15,000 inmates in common areas such as prison gymnasiums, dayrooms, and program rooms. (Cal. App. 4th at 809.) A preliminary observation

4/ See C.C.R. Title 15, §3377.1 HISTORY: LWOP inmates spend up to 15 years between Close A and Close B custody.
5/ See C.C.R. Title 15, §3375.2(a)(6) n.15,17,24. LWOP inmates were assigned to level IV housing regardless of history.

of the case is that the main resistance to relief from the prison overcrowding that caused the need to house 15,000 individuals in conditions of extreme peril to life, property, and state resources, (Cal. App. 4th at 811), came from the California Correctional Peace Officers Association, who were in exclusive control of the situation. (Id., 814-815.)

What is not discussed in this case, is the fact that thousands of those 15,000 inmates housed in gymnasiums were in fact level II and III inmates housed in the gymnasiums at Level IV Facilities. Moreover, these inmates were allowed to share yard time with the level IV inmates.

LWOP inmates.

Prison officials felt confident in this for good reason. For decades, LWOP and life inmates have been the most stabilizing factor in California prisons. The same prison administrators who deny LWOP inmates access to self-help, sponsored and volunteer rehabilitation programs, rely on LWOP and life offenders to maintain peace and quell disturbances.

It was not until prison realignment in 2012 through AB109 were LWOP offenders permitted access to level III housing. But with Close Custody and other facility restrictions, LWOP offenders still lacked meaningfull access to treatment or rehabilitation programs even after being taken off Close Custody Status.

It was not until Wardens Rowe and Asuncion at California

State Prison Los Angeles, who began the Positive Programming Facility housing, and Warden Arnold at California State Prison Solano, who allowed the creation of rehabilitative programming through an association with Delancy Street, did the Department of Corrections have to face the fact that LWOP offenders were the most suited not only to benefit from these treatment and rehabilitative programs, but also to facilitate and peer mentor in these programs. So much so that presently, Wardens and Sacramento administrators are tasked with developing a comprehensive strategy for the implementation of other ventures like podcast programming (Ear Hustle/Uncaged), and lifer and LWOP offender developed groups (Lifers With Optimistic Progress).

The Department of Corrections and rehabilitation is only now facing an inconvenient truth: LWOP offenders, to a moral certainty, possess problem solving, impulse control, conflict resolution, anger and peer management skills that rival or even exceed those of Department employees themselves. LWOP and long-term lifers are preferred by housing officers because they do not cause disturbances and mediate disputes, reducing the need for use of force or official documentation.

C. History.

Contrary to this Court's statement in FRANKLIN/COOK, supra, and Gov. Brown's assessment of LWOP sentences in the Jordan

Commutation (encl.), LWOP sentences traditionally carried neither the presumption of incorrigibility nor did they offer no life outside prison. Former C.C.R. Title 15, §2817 6/ outlined the statutory process where LWOP offenders were interviewed and referred to the Governor for possible commutation in a process almost identical to the traditional Board Hearing procedure for term to life inmates.

LWOPs committed before 1982 were automatically reviewed after 12 years; committments after 1982 were reviewed after 30. The authority for this process is still codified in the Department Operations Manual, Chapter 7, §74030.23. 6/

These procedures were undermined during the Deukmejian and Wilson administrations' prison build-ups of the 80's and 90's.

Pursuant to the 1990 Memorandum from David Tristan, Deputy Director (encl.), The Board of Prison Terms implemented the change in existing regulations so that LWOP inmates twice convicted of a felony would no longer have their cases reviewed by the Department. Instead, those inmates must apply directly to the Governor (Wilson) who held a clear bias.

In 1992, Gov. Wilson began remanding paroled lifers back to Department custody and issuing automatic denials for Board parole candidates.

In January 1994, BPT Executive Director Ted Rich published a Memorandum (encl.), stating the revision to Department rules which eliminated the LWOP review hearings process.

6/ encl.

But the most telling account of how this process had been corrupted was told by the Chairman of the Board of Prison Terms himself, Albert Leddy.

In a May 2000 Declaration (encl.), Chrm. Leddy mentions the decline in parole grants in the Deukmejian administration, then outlines how Gov. wilson's policies "practically eliminated paroles." (pars. 3-5.) In paragraph 7, Leddy questioned the legality of Gov. Wilson's appointments to the BPT. In paragraphs 9-10, Leddy states how Wilson utilized P.C. 3041.2 and 15 C.C.R. §2451(c) to rescind previous grants of parole. At paragraph 18, Leddy characterized this as a "conspiracy to prevent life prisoners from paroling..."

At paragraph 20, Leddy states Gov. Davis' policy that no murder offender would be paroled on his watch. Of course, this Declaration predated the recall of Gov. Davis.

Even this Court is no stranger to these facts. In IN RE ROSENKRANTZ (2002) 29 Cal. 4th 616, this Court stated:

> "The author of the majority opinion of the Court of Appeal decision in Rosenkrantz IV also authored a concurring opinion stating that sufficient evidence had been presented to support the Superior Court's finding that the Governor had adopted a policy of not granting parole to individuals convicted of murder and sentenced to an indeterminate term."
> (Id., 29 C4th at 636.)

Examining the history compels the understanding. This government made no distinction between LWOP and life with parole when arbitrarily fixing the process against parole. The provisions of

15 C.C.R. §2817 clearly indicate a statutory presumption that LWOP sentences were not sentences offering no life outside prison.

D. Invitation.

This prison industry is buoyed by ignorance; the public's ignorance of the criminal justice system and prison in particular. Ignorance of the law may be no excuse for one's conduct, but it's a perfect cover for a seven figure salary. This is not a Shawshank world of harmonicas, cigar-chewing wardens, and love letters written in pencil narrated by Morgan Freeman.

This is a world of million dollar campaigns, union contracts, and propaganda. The only constant in both worlds is the food is trash.

The fences serve a dual purpose. They not only keep inmates in; they keep the public out. LWOP offenders would consider it a tragedy if this Court were to decide this issue without first speaking to an LWOP offender. LWOP offenders have done the heavy lifting of rehabilitation; they are Kelly Savage, who received her commutation and parole grant and now works for the California Coalition of Women Prisoners; they are Joseph Bell, founder of the EDGE Juvenile Outreach Program in Kern County; they are Nick Woodall, paralegal and publisher of the POSSE LEGAL UPDATE (encl.); they are Ken Hartman, author of the book "The Other Death Penalty."

Speaking and observing this group of individuals working and networking to create a safer California than perhaps the

Department itself may not justify a particular ruling, but it may provide what so many Board Commissioners demand of offenders; insight.

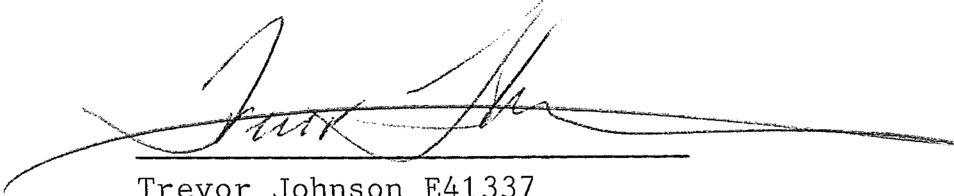
Insight is what U.S. District Judge Thelton Henderson gained when he personally visited San Quentin in 2010 before making his rulings in the Plata and Coleman cases. (encl.) What he was sold was fear and apprehension. What he saw was atonement, remorse, hard work and the capacity to change.

The Department had those values enshrined in its regulations for both LWOP and lifers alike. 15 C.C.R., Title 15, §2817 recognized what was understood; LWOPs have the capacity to be some of the State's most valuable public safety assets. It was not until Governors Deukmejian, Wilson and Davis turned public safety into a protection racket did fear and profit trump atonement and rehabilitation. 18-25 year-old LWOPs and indeterminate lifers are not different, except to the people who know LWOPs are the backbone of treatment, rehabilitation, and the end to victimization in their communities. Wherever they are.

We invite all to see for themselves.

Amici prays this Court accepts this brief for filing and considers its content.

Respectfully submitted,



Trevor Johnson E41337

July 17, 2022

DECLARATION OF SERVICE

Case Name: People v. Jerimiah Williams
Case No: S262229

I, Trevor Johnson, declare as follows:

I am over the age of eighteen years old, and not an original party to the abovetitled cause. As a requested Amicus Curiae I personally drafted and submitted for filing this Amicus Curiae brief. I served a true copy of said documents:

- Application for Relief From Default
- Application for Leave of Court to File Brief
- Amicus Curiae Brief in Support of Jerimiah Williams

By enclosing those documents in sealed, prepaid envelopes, and handing those envelopes to correctional staff employed at The California Health Care Facility, Stockton, California. Each of the envelopes were addressed as follows:

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

Executed this 17th day of July,2022.

Trevor Johnson