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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

STANLEY RUSSELL JACKSON,

Defendant and Appellant.

E080543

(Super.Ct.No. VCR351)

OPINION

APPEAL from the Superior Court of San Bernardino County. John P. Vander Feer, Judge. Affirmed.

Athena Shudde, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Charles C. Ragland, Assistant Attorney General, Christopher P. Beesley and Michael D. Butera, Deputy Attorney Generals, for Plaintiff and Respondent.

In 1977, when defendant and appellant Stanley Jackson was 20 years old, he broke into a home belonging to Jane Doe. Doe was later found naked and bloody from knife wounds and subsequently died. Defendant was convicted of first degree murder with the special circumstances that the murder was committed during the commission or attempted commission of burglary and attempted rape. He was sentenced to life in prison without the possibility of parole (LWOP). His conviction was upheld in this court's prior unpublished opinion. (*People v. Jackson* (June 5, 1981, E004482) [nonpub. opn.] (Opinion).)

In 2022, defendant filed a postjudgment motion to preserve evidence for a future youth offender parole (YOP) hearing under Penal Code section 3051.¹ His motion was denied with the trial court finding he was not entitled to a YOP hearing under section 3051.

Defendant concedes his LWOP sentence for a special circumstance murder committed when he was 20 years old renders him statutorily ineligible for the YOP program under section 3051, subdivision (h), but contends this exclusion violates his federal constitutional equal protection rights. We reject the claim for the reasons we articulated in *People v. Ngo* (2023) 89 Cal.App.5th 116, review granted May 17, 2023, S279458 (*Ngo*).²

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² California Rules of Court, rule 8.1115(e)(1) allows this court to cite to *Ngo* for its persuasive value despite review being granted.

FACTUAL AND PROCEDURAL HISTORY³

A. FACTUAL HISTORY

On September 7, 1977, Jane Doe returned home and told her boyfriend when she spoke with him on the phone around 10:00 p.m., that she was going to take a shower and go to work at midnight. Doe's neighbors heard loud thumping noises, a scream and a gunshot come from Doe's apartment around 11:00 p.m. The neighbor looked out her window and saw a Black man wearing jeans run from Doe's apartment carrying a knife; he left in a car. The neighbor entered Doe's apartment; the front door had been kicked in. Doe was found naked on the floor in her bedroom covered in blood. She had been "literally cut to pieces." Doe died soon after the neighbor entered the apartment. A knife scabbard was found near Doe's body, which had the initials S.J. and D.F., along with the words "Black Power," and a drawing of a clenched fist. A gun that belonged to Doe was found on the bed and a bullet hole was found in the wall of the bedroom.

Defendant's home was searched. Bloody tennis shoes with the initials S.J. and D.F., along with the words Black Power, were found. Blood was found in his car. Defendant had been treated for a gunshot wound at a hospital the night that Doe was killed. While in jail, defendant told another inmate that he had killed a White girl.

B. PROCEDURAL HISTORY

Defendant was found guilty on February 24, 1978, of willful, premeditated and deliberate first degree murder (§ 187, subd. (a)). The jury found true the special

³ The factual and procedural histories are drawn from the Opinion.

allegations that the murder was committed during the attempted commission of rape by force and violence (former § 261, subd. (2)); and that the murder was committed during the commission or attempted commission of burglary (former § 460, subd. (i)).

Defendant was sentenced to life without the possibility of parole on April 7, 1978.

Defendant appealed his conviction. The judgment was upheld on appeal as stated in the Opinion. On December 23, 2022, defendant filed a motion for a *Franklin/Cook* proceeding under Penal Code section 1203.01 and for appointment of counsel (Motion). He sought to have an evidence preservation proceeding to make a record of mitigating evidence tied to his youth. He claimed he was entitled to a YOP hearing pursuant to section 3051 as he was 20 years old at the time he committed the crime. On December 28, 2022, the trial court denied the Motion finding, “Defendant is ineligible for ‘Franklin/Cook proceeding.’ Penal Code § 3051 and *People v. Sands* (2021) 70 Cal.App.5th 193.” Defendant filed an appeal from the denial of the Motion.

DISCUSSION

Defendant contends section 3051, subdivision (h), which provides that individuals sentenced to LWOP for offenses committed when they were between the ages of 18 and 25 are not entitled to YOP hearings, violates equal protection. He maintains that those who are sentenced to LWOP when they are between 18 and 25 years old are similarly situated to those persons who are eligible for YOP hearings for crimes committed when they were between the ages of 18 and 25 but are sentenced to 25 years to life or more. The California Supreme Court will ultimately decide the issue as it has granted review on this issue in *People v. Hardin* (2022) 84 Cal.App.5th 273, 285, review granted January

11, 2023, S277487 (*Hardin*). This court held in *Ngo, supra*, 89 Cal.App.5th 116, that such distinction does not violate equal protection and we adopt its reasoning in this case.

“The Legislature enacted section 3051 in response to decisions from the United States and California Supreme Courts concerning Eighth Amendment limitations on juvenile sentencing that, in turn, rested on developments in science and social science showing fundamental differences between juvenile and adult minds and parts of the brain involved in behavior control.” (*People v. Morales* (2021) 67 Cal.App.5th 326, 345-346, fn. omitted.)

Section 3051, subdivision (a)(1) provides, “A youth offender parole hearing is a hearing by the Board of Parole Hearings for the purpose of reviewing the parole suitability of any prisoner who was 25 years of age or younger, or was under 18 years of age as specified in paragraph (4) of subdivision (b), at the time of the controlling offense.” Section 3051 has been amended several times to expand those eligible for YOP hearings. (*People v. Morales, supra*, 67 Cal.App.5th at pp. 346-347.) Section 3051, subdivision (b)(3) provides, “A person who was convicted of a controlling offense that was committed when the person was 25 years of age or younger and for which the sentence is a life term of 25 years to life shall be eligible for release on parole at a youth offender parole hearing during the person’s 25th year of incarceration.” (§ 3051, subd. (b)(3).) On the other hand, section 3051, subdivision (h) provides, in pertinent part, that eligibility for YOP hearings does not apply to persons, “in which an individual is sentenced to life in prison without the possibility of parole for a controlling offense that

was committed after the person had attained 18 years of age.” Defendant insists that this distinction violates equal protection.

When evaluating an equal protection challenge, we first “ask whether the state adopted a classification affecting two or more groups that are similarly situated in an unequal manner.” (*People v. Chatman* (2018) 4 Cal.5th 277, 289.) We then “consider whether the challenged classification ultimately bears a rational relationship to a legitimate state purpose.” (*Ibid.*) “When an equal protection case does not involve a suspect classification such as race and does not infringe on a fundamental right, the legislative classification will be upheld whenever it has a rational relationship to a legitimate state interest.” (*People v. Parker* (2006) 141 Cal.App.4th 1297, 1309.) “A classification in a statute is presumed rational until the challenger shows that no rational basis for the unequal treatment is reasonably conceivable.” (*Chatman*, at p. 289.)

In *Ngo*, this court addressed the identical claim raised by defendant. This court initially assumed, without deciding, that the two groups were similarly situated. (*Ngo*, *supra*, 89 Cal.App.5th at p. 123.) However, this court concluded that section 3051 did not violate equal protection because there were several rational bases for the unequal treatment, including that section 3051 provided for a YOP hearing, but a defendant sentenced to LWOP was not entitled to parole. (*Ngo*, at p. 123.) In addition, this court found that “If any further justification is needed, we find it in the difference in culpability. A person guilty of murder with special circumstances is the worst of the worst. This is the most heinous crime known to our Penal Code, and one of the few crimes subject to the death penalty in California. [Citations.] In *Graham* [*v. Florida*

(2010) 560 U.S. 48] the Supreme Court held that ‘for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole.’ [Citation.] It recognized that murder is different: ‘Although an offense like robbery or rape is “a serious crime deserving serious punishment,” [citation], those crimes differ from homicide crimes in a moral sense.’ [Citation.] Thus, in a homicide case, it allowed a life without parole sentence for a juvenile offender, as ‘a risk to society for the rest of his life,’ despite its concern in nonhomicide cases about the difficulty of determining whether a juvenile is incorrigible.” (*Ngo, supra*, 89 Cal.App.5th at pp. 123-124.) Finally, this court found that “first degree murder with a special circumstance differs from ordinary first degree murder in a moral sense. ‘ “It is the prerogative, indeed the duty, of the Legislature to recognize degrees of culpability when drafting a Penal Code.” ’ ” (*Id.* at p. 124.)

Numerous other cases have rejected the equal protection claim defendant makes here on similar grounds as set forth in *Ngo*. (*People v. Sands, supra*, 70 Cal.App.5th at pp. 204-205; *People v. Morales, supra*, 67 Cal.App.5th at pp. 347-349; *People v. Jackson* (2021) 61 Cal.App.5th 189, 199-200; and *People v. Acosta* (2021) 60 Cal.App.5th 769, 780-781.) As in *Ngo*, and the above-cited cases, we find “section 3051 does not violate equal protection merely because it singles out youthful offenders sentenced to LWOP from all other youthful offenders.” (*Ngo, supra*, 89 Cal.App.5th at p. 127.)

Defendant seeks to have this court follow the reasoning in *Hardin* and hold that section 3051’s distinction between youthful offenders with LWOP and non-LWOP sentences does violate equal protection. (*Hardin, supra*, 84 Cal.App.5th at p. 287-288.)

In reaching this conclusion, the *Hardin* court reasoned, “Viewed in light of section 3051’s intended purpose of permitting a determination whether a person who committed a serious or violent crime between the age of 18 and 25 has sufficiently matured and outgrown the youthful impulses that led to the commission of the offense, an individual serving a parole-eligible life sentence and a person who committed an offense at the same age serving a sentence of life without parole are similarly situated.” (*Id.* at p. 287) It further found that there was no rational basis for the distinction. It concluded, “[I]f, as the Legislature stated, the goal of section 3051 was to apply the *Miller*⁴ youth-related mitigating factors to young adults up to the age of 26 in light of neuroscience research that demonstrated the human brain continues to develop into a person’s mid-20’s, and thus to permit youth offenders a meaningful opportunity for parole if they demonstrate increased maturity and impulse control, then for that purpose there is no plausible basis for distinguishing between same-age offenders based solely on the crime they committed.” (*Id.* at p. 288)

In *Ngo*, we addressed the findings in *Hardin*. We explained “the ‘rational basis’ inquiry is not limited to the purposes of the challenged law. [Citation.] The *Hardin* court, however, looked at the rational basis for the distinction strictly in terms of ‘the goal of section 3051.’ . . . We concur with those courts that have sought and found a rational basis for the challenged distinction in other sentencing considerations.” (*Ngo, supra*, 89 Cal.App.5th at p. 125.) Moreover, while *Hardin* identified a hypothetical where a special

⁴ *Miller v. Alabama* (2012) 567 U.S. 480.

circumstance murder would not necessarily be perceived as more culpable than nonspecial circumstance murder, “ ‘any plausible reason for distinguishing between [two classes] *need not exist* in every scenario in which the statutes might apply.’ ” (*Ngo*, at p. 126.) For the same reasons set forth in *Ngo*, we decline to follow the reasoning and conclusions in *Hardin*.

For the foregoing reasons, we find that section 3051, subdivision (h), does not violate equal protection and the trial court properly denied defendant’s Motion to preserve evidence for a YOP hearing.

DISPOSITION

The trial court’s order is affirmed.

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MILLER
J.

We concur:

McKINSTER
Acting P. J.

CODRINGTON
J.