Filed 6/25/25 P. v. Sutton CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. MARTEL ANTWONE SUTTON, Defendant and Appellant.	E083248 (Super.Ct.No. FSB037526) OPINION

APPEAL from the Superior Court of San Bernardino County. Ronald M. Christianson, Judge. (Retired Judge of the San Bernardino Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Reed Webb, 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, Eric A. Swenson and Monique Myers, Deputy Attorneys General, for Plaintiff and Respondent.

I.

INTRODUCTION

Defendant and appellant Martel Antwone Sutton was sentenced to a prison term of 40-years-to-life for crimes committed when he was a juvenile. Having served 18 years of his sentence, defendant petitioned for recall and resentencing under Penal Code[1] section 1170, subdivision (d), which, on its face, applies only to juveniles sentenced to explicit life without parole. The trial court denied the petition on the ground defendant was not sentenced to explicit life without parole or its functional equivalent. On appeal, defendant contends the court failed to consider the evidence he presented in mitigation of his offenses. He also argues the court erred by using actuarial data for estimating his life expectancy, which was prohibited by *People v. Contreras* (2018) 4 Cal.5th 349 (*Contreras*), so his case must be remanded for a new hearing. Assuming, without deciding, the court erred by using actuarial data for estimating defendant's life expectancy, we do not agree that a 40-years-to-life sentence is functionally equivalent to life without parole. Accordingly, we affirm the trial court's order.

II.

FACTUAL AND PROCEDURAL BACKGROUND[2]

On December 27, 2002, at 2:00 a.m., defendant turned off the victim's electrical power at her residence and entered her home through a window. According to

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[1] All future statutory references are to the Penal Code unless otherwise stated.

[2] The factual background is taken from defendant's prior appeal in case No. E038982. (*People v. Sutton* (Nov. 6, 2007, E038982 [nonpub. opn.]) (*Sutton I*).)

defendant's recorded statement given to the police, he intended to take the victim's money and car. The victim was awakened by a noise and walked to the kitchen to get a flashlight because her bedroom light was not working. While in the kitchen, she saw defendant and screamed. Defendant hit her on the head with a frying pan two or three times, causing her to become dizzy. Defendant said he wanted her keys and money. The victim gave defendant her keys and went to the dining room to look for her money. Defendant told her, "Get your money, or I'll hit you again." The victim gave defendant her wallet. Defendant took the money out of the victim's wallet. According to defendant's recorded statement, he had dumped everything out of the victim's purse before the victim woke up.

Also, according to defendant's recorded statement, defendant decided to rape the victim after he hit her with the pan and took her to the back bedroom. After taking the victim's money, he said, "What about the room in the back?" Defendant and the victim walked to the back room. On the way, defendant ripped the phone off the wall and told the victim to take off her clothes and lie down. She did what defendant told her to because she was afraid. The victim lay on the bed in the back bedroom. Defendant hit her several times in the head and face with the pan.

As defendant began pulling off the victim's nightgown and panties, she felt as if she would pass out. She resisted defendant's attempts to pull her legs apart and asked why defendant kept hitting her. Defendant replied, "You won't hold still." The victim

then passed out. Defendant admitted during his statement to the police that he raped the victim.

When the victim regained consciousness, she was lying on the floor and defendant was behind her. He told her to sit up and forced her up. He put his penis in her mouth and said, "Is that the best you can do?," and threw the victim's nightgown to her. After she put it on, defendant and the victim walked down the hall. As they walked, defendant asked the victim, "What is that little house in the back?" She said it was her shed. Defendant said he was going to put her in it, and he walked her out to the shed. He then locked her inside the shed and left.

According to defendant's recorded statement, defendant began to drive away and then realized he had dropped his wallet and went back to the victim's house to retrieve it. After he returned, he brought the victim a glass of water. In response to the victim asking when she could call for help, he said at "2:00" and locked her in the shed again. About 10 minutes later the victim heard defendant drive away in her car.

The victim called out for assistance and pounded on the shed. Finally, the police arrived around 7:00 a.m. and released the victim from the shed. She told the police someone had raped her and had stolen her keys and money.

The victim sustained injuries to her face, including bruising, loose teeth, and facial fractures requiring her jaw to be wired closed for about two months. She also sustained trauma to her vagina, including extensive bleeding.

The next day defendant was arrested while in possession of the victim's car. After waiving his *Miranda*[3] rights, defendant admitted to the charged offenses, with the exception of sodomy.

In 2005, a jury convicted defendant of first degree burglary (§ 459; count 1); assault with a deadly weapon (§ 245, subd. (a)(1); count 2); forcible oral copulation (§ 288a; count 3); forcible rape (§ 261, subd. (a)(2); count 4); false imprisonment (§ 236; count 6); kidnapping (§ 207, subd. (a); count 7); robbery (§ 211; count 8); and unlawful taking of a vehicle (Veh. Code, § 10851, subd. (a); count 9). As to all charges, the jury found true that defendant personally used a deadly weapon, to wit, a frying pan, and that he personally inflicted great bodily injury (§§ 12022, subd.(b)(1); 12022.7, subd. (a); 12022.8.) The jury acquitted defendant of attempted forcible sodomy (§§ 664, subd. (a) & 286, subd. (c)(2)) as alleged in count 5.

On August 2, 2005, defendant was sentenced to a determinate term of 22 years, four months and a consecutive indeterminate term of 25 years to life in state prison with 1,089 days of credit for time served.

Defendant subsequently appealed. On November 6, 2007, this court affirmed the judgment of conviction but remanded the matter to the superior court with directions to modify defendant's sentence. (*Sutton I*, *supra*, E038982.) On remand, the trial court resentenced defendant to 40 years to life in prison.

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[3] *Miranda v. Arizona* (1966) 384 U.S. 436.

On September 5, 2023, defendant filed a petition to recall his sentence and for resentencing under section 1170, subdivision (d). Defendant argued his sentence was the functional equivalent to life without the possibility of parole (LWOP) pursuant to *People v. Heard* (2022) 83 Cal.App.5th 608 (*Heard*), and that he met the section 1170, subdivision (d)(1) criteria to be resentenced. Attached to his petition were documents relating to courses he completed while in prison and a typed "Statement of Remorse." The People filed an opposition, arguing defendant was ineligible for relief because he was not sentenced to LWOP or a de facto LWOP sentence because defendant would have a parole hearing at the age of 40 under section 3051, the Youth Offender Parole program.

The trial court heard no argument but took the matter under submission and issued a written ruling denying the petition on January 31, 2024. The court found defendant ineligible for relief because he was not sentenced to the functional equivalent of LWOP. The court's ruling recognized both parties' positions. The court declined to follow the People's argument because the question of whether defendants who were sentenced under the One Strike sentencing scheme were eligible for the Youth Offender Parole program was then pending before the California Supreme Court.[4] The trial court took judicial notice that defendant's life expectancy at sentencing was 71 to 72 years old and determined that based on defendant's presumed custody credits under section 2933.1, his earliest parole eligibility date would be in 2036, when he would be 49 years old. The

[4] Our Supreme Court in *People v. Williams* (2024) 17 Cal.5th 99 subsequently resolved the split, holding that one strike offenders are not entitled to the benefit of youthful offender parole hearings.

court recognized that "[a]lthough life expectancy data is not the sole criteria for determining whether a sentence allows for a meaningful opportunity to obtain release back into society, such data does provide useful information in making the analysis." The court determined that since defendant presented no evidence to show his life expectancy was any shorter than the average, parole eligibility at age 49 years of age "provide[d] for a meaningful opportunity for release and reintegration into society." The court thus concluded defendant's sentence of 40 years to life was not the functional equivalent of LWOP.

Defendant timely appealed.

III.

DISCUSSION

Defendant contends the trial court improperly denied his section 1170, subdivision (d)(1) petition to recall his 40 years to life sentence because the court relied on actuarial data for life expectancy in violation of *Contreras, supra*, 4 Cal.5th 349, and did not consider the petition on its merits. We need not decide whether the court erred in relying on actuarial data for life expectancy because we conclude that a 40-years-to-life sentence is not the functional equivalent of a sentence of LWOP.

A. *Standard of Review*

"'Statutory construction begins with the plain, commonsense meaning of the words in the statute, "'because it is generally the most reliable indicator of legislative intent and purpose.'"' [Citation.] A statute is not to be read in isolation, but construed in

context and "'with reference to the whole system of law of which it is a part so that all may be harmonized and have effect.'" [Citation.] "'If there is no ambiguity or uncertainty in the language, the Legislature is presumed to have meant what it said, and we need not resort to legislative history to determine the statute's true meaning.'"" (*Heard*, *supra*, 83 Cal.App.5th at pp. 622-623; see *People v. Superior Court* (*Valdez*) (2025) 108 Cal.App.5th 791, 800 (*Valdez*).)

"The proper interpretation of a statute is a question of law subject to de novo review. [Citation.] When the trial court applies its factual findings under a statute, we review the factual findings for substantial evidence; but the interpretation and application of the statute to those factual findings is a question of law subject to de novo review." (*People v. Harring* (2021) 69 Cal.App.5th 483, 495; see *Valdez*, *supra*, 108 Cal.App.5th at p. 800; *Heard*, *supra*, 83 Cal.App.5th at p. 622.)

B. *Section 1170, subdivision (d) and Legal Framework*

The Legislature enacted section 1170, subdivision (d), against the backdrop of an evolution in how we understand and treat juvenile and youth offenders. The United States Supreme Court thus held in *Graham v. Florida* (2010) 560 U.S. 48 (*Graham*) that the Eighth Amendment prohibits life without parole sentences for juvenile nonhomicide offenders. In response to *Graham*, our California Legislature enacted section 1170, subdivision (d), to give juveniles sentenced to life without parole the opportunity to petition for recall and resentencing to a term with parole. (See generally *In re Kirchner* (2017) 2 Cal.5th 1040, 1049-1050; see also *Valdez*, *supra*, 108 Cal.App.5th at p. 794.)

Under section 1170, subdivision (d), a defendant who was under 18 years old when committing a crime for which the defendant was sentenced to life without parole may petition the sentencing court for recall and resentencing after having been incarcerated for at least 15 years. The defendant must include a statement describing the defendant's remorse and work toward rehabilitation and asserting that one of the following is true: (A) The defendant was convicted pursuant to felony murder or aiding and abetting murder, (B) the defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the sentence is being considered for recall, (C) the defendant committed the offense with at least one adult codefendant, or (D) the defendant has performed acts indicating rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse. (§ 1170, subd. (d)(2)(A)-(D).) If the court finds by a preponderance of the evidence any of the statements in section 1170, subdivision (d)(2)(A) to (D) true, the trial court "shall recall the sentence and commitment previously ordered and hold a hearing to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence." (§ 1170, subd. (d)(5).) The statute lists contributing factors to consider at resentencing. (§ 1170, subd. (d)(8) & (11).)

Section 1170, subdivision (d)(1), applies to juvenile offenders sentenced to LWOP; it does not apply to any other group of defendants. (See *Valdez, supra*, 108 Cal.App.5th at p. 800 ["By its terms, subdivision (d) of section 1170 limits relief to juvenile defendants who were either originally sentenced to LWOP or resentenced to LWOP upon petitioning for resentencing under section 1170(d)(1)."]; *Heard, supra*, 83 Cal.App.5th at p. 626 ["section 1170, subdivision (d)(1)(A), limits eligibility to petition for recall and resentencing to juvenile offenders sentenced to an explicitly designated life without parole term"].)

Nonetheless, Courts of Appeal have held that section 1170, subdivision (d), applies to juveniles sentenced to the functional equivalent of life without parole. In *Heard*, *supra*, 83 Cal.App.5th 608, the juvenile defendant had been sentenced to 23 years plus 80 years to life for crimes committed when he was 15 years old. (*Id.* at p. 612.) The juvenile defendant in *People v. Sorto* (2024) 104 Cal.App.5th 435 (*Sorto*) had been sentenced to a determinate term of 10 years plus an indeterminate term of 130 years to life for crimes committed when he was 15 years old. (*Id.* at p. 440.) In both cases, the trial courts denied section 1170, subdivision (d), petitions on the ground the statute is limited to juveniles sentenced to explicit life without parole.

Heard and *Sorto* agreed that the statute on its face is limited to juveniles sentenced to explicit life without parole but concluded nonetheless that its exclusion of juveniles sentenced to functionally equivalent life without parole sentences violated the constitutional guarantee to equal protection. (*Heard, supra*, 83 Cal.App.5th at p. 632;

Sorto, *supra*, 104 Cal.App.5th at p. 454; accord, *People v. Bagsby* (2024) 106 Cal.App.5th 1040, 1046 [107 years to life sentence on a 15 year old was functional equivalent to life without parole].) In so holding, *Heard* and *Sorto* rejected, among other arguments, that section 3051 avoided any equal protection problem. Section 3051 entitles a defendant convicted of a controlling offense committed when the person was 25 years of age or younger, and for which the sentence is 25 years to life, to a youth offender parole hearing in the 25th year of incarceration. Even so, that section does not """reform[]""" a defendant's sentence such that it is no longer a de facto life without parole sentence. (*Heard*, *supra*, at p. 628.) The courts distinguished *People v. Franklin* (2016) 63 Cal.4th 261 (*Franklin*), which held that due to section 3051's retroactive operation, juvenile defendants serving a sentence of 50 years to life were no longer serving life without parole sentences. (*Heard*, at p. 629.) Section 1170, subdivision (d)(1)(A), only requires that the defendant "was sentenced" to life without parole; the section does not require that the defendant currently be serving such a sentence. (*Heard*, at pp. 629-630; accord, *Sorto*, *supra*, at p. 448.) "Accordingly, the fact that section 3051 superseded Sorto's sentence is irrelevant. Instead, it is enough that he 'was sentenced' to the functional equivalent" of life without parole. (*Sorto*, at p. 448.) *Heard* and *Sorto* thus concluded that treating juvenile offenders sentenced to de facto life without parole differently from ones sentenced to explicit life without parole violates equal protection.

Our California Supreme Court has yet to address what is the shortest sentence that can constitute a de facto life without parole sentence in the context of equal protection and section 1170, subdivision (d). However, *Franklin, supra*, 63 Cal.4th 261 and *Contreras, supra*, 4 Cal.5th 349 provide some guidance.

In *Franklin, supra*, 63 Cal.4th 261, the 16-year-old defendant was sentenced to 50 years to life but was entitled to parole consideration after 25 years under section 3051. (*Franklin*, at p. 268.) The court held that the defendant's de facto sentence of 25 years to life was not the functional equivalent of life without parole. (*Franklin*, at p. 279.) *Franklin* thus suggests that any sentence of 25 years to life or less is not functionally equivalent to life without parole.

Contreras, supra, 4 Cal.5th 349, could be interpreted to suggest a ceiling on what sentence is the functional equivalent to life without parole, at least in the case of nonhomicide offenses. That case involved two 16 year olds, one sentenced to 50 years to life and the other to 58 years to life for nonhomicide offenses.[5] (*Id.* at p. 356.) The defendants contended that their sentences violated the Eighth Amendment under *Graham* and *People v. Caballero* (2016) 55 Cal.4th 262 (*Caballero*), the latter of which held that a 110 years to life sentence for a nonhomicide juvenile offender was a de facto LWOP sentence and, as such, violated the Eighth Amendment.

[5] Like in this case, because the defendants were sentenced under the One Strike law, they were ineligible for a section 3051 youth offender parole hearing. (*Contreras, supra*, 4 Cal.5th at p. 359.)

In addressing whether the juveniles' sentences violated the Eighth Amendment, *Contreras, supra,* 4 Cal.5th at pages 360 to 364, rejected an actuarial approach that would uphold any sentence so long as the juvenile had an opportunity for parole within the juvenile's expected lifetime. Instead, any approach to the issue had to be grounded in *Graham*'s observations about why we treat juvenile offenders differently for sentencing purposes by affording them a "'meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.'" (*Contreras,* at p. 367.) Per *Graham,* a lawful sentence must recognize "'a juvenile nonhomicide offender's capacity for change and limited moral culpability;'" "offer 'hope of restoration,'" "'a chance to demonstrate maturity and reform,'" a "'chance for fulfillment outside prison walls,'" and "a 'chance for reconciliation with society'"; "offer 'the opportunity to achieve maturity of judgment and self-recognition of human worth and potential'"; and "offer the juvenile offender an 'incentive to become a responsible individual.'" (*Contreras,* at p. 367.)

Contreras concluded that a 50 years to life sentence would not allow a juvenile offender to rejoin society for a "sufficient period to achieve reintegration as a productive and respected member of the citizenry." (*Contreras, supra,* 4 Cal.5th at p. 368.) Returning the defendant to society in his late sixties or early seventies also would not incentivize him to change going forward, and such a sentence has an attenuated relationship to any penological goals for nonhomicide offenders. Further, a conclusion that 50 years to life is functionally equivalent to LWOP is consistent with conclusions other states have reached. (*Id.* at pp. 368-369.)

Courts have made clear, however, that not all lengthy sentences equate to LWOP. (E.g., *People v. Olmos* (2025) 109 Cal.App.5th 580, 583 [33 years to life was not functional equivalent of LWOP]; *People v. Munoz* (2025) 110 Cal.App.5th 499 [nor was 50 years to life, at least not for purposes of section 1170, subdivision (d)(1)].) Moreover, other than citing *Caballero*, *supra*, 55 Cal.4th at page 268, and presumably recognizing that most people (let alone most inmates) do not live to 103 (or, in the case of the 15-year-old defendant in *Heard*), the court in *Heard* did not discuss how to calculate whether a defendant's sentence is the functional equivalent of LWOP (or whether, in non-obvious cases, a court should be making that calculation). (*Heard*, *supra*, 83 Cal.App.5th at p. 629.) The Supreme Court in *Caballero*, however, gave some guidance in an Eighth Amendment, nonhomicide context. In *Caballero*, the Supreme Court, concluding a defendant who "will become parole eligible over 100 years from now" was serving "the functional equivalent of a life without parole sentence," stated that the defendant "would have no opportunity to 'demonstrate growth and maturity' to try to secure his release" and that, under *Graham* "a state must provide a juvenile offender 'with some realistic opportunity to obtain release' from prison during his or her expected lifetime." (*Caballero*, at p. 268.) *Contreras*, *supra*, 4 Cal.5th 349, however, cautioned against basing decisions about the legality of a sentence on "statistical life expectancies" and "decline[d] to adopt a constitutional rule that employs a concept of life expectancy whose meaning depends on the facts presented in each case," particularly where the record "contains no findings by the trial court on these matters." (*Id.* at pp. 363, 364; see

id. at p. 364 [quoting *State v. Null* (Iowa 2013) 836 N.W.2d 41, 71 for the proposition, "'[W]e do not believe the determination of whether the principles of *Miller* or *Graham* apply in a given case should turn on the niceties of epidemiology, genetic analysis, or actuarial sciences in determining precise mortality dates.'"].)

C. *Analysis*

Assuming without deciding that *Contreras*'s analysis under the Eighth Amendment applies to the equal protection context, *Contreras* is distinguishable, as are *Heard* and *Sorto*. The *Contreras* defendants faced potential release from prison in their late sixties or into their seventies. The *Heard* and *Sorto* defendants could not obtain release from prison within their natural life expectancies given the extreme length of their sentences (23 years plus 80 years to life for Heard and 10 years plus 130 years to life for Sorto). In contrast, defendant here will be eligible at age 50 for the Elderly Parole Program. (§ 3055, subd. (a) ["The Elderly Parole Program is hereby established, to be administered by the Board of Parole Hearings, for purposes of reviewing the parole suitability of any inmate who is 50 years of age or older and has served a minimum of 20 years of continuous incarceration on the inmate's current sentence, serving either a determinate or indeterminate sentence"].)[6] And, provided defendant receives the credits he is eligible to earn while he is in prison, his minimum parole eligibility date would be in 2036, when he will be 49 years old. Furthermore, even assuming defendant receives

[6] The Elderly Parole Program has been significantly amended to the inmates' benefit in the years since *Contreras*, namely reducing the age of eligibility from 60 to 50 years old and lowering the number of years an inmate is required to serve in custody. (Stats. 2020, ch. 334, § 2; Stats. 2023, ch. 311, § 15.)

only his presentence custody credits and no additional conduct credits while in prison, he will be eligible for parole at the age of 55. Release at those ages—a full decade earlier than the *Contreras* defendants—provides defendant with an opportunity to reintegrate into society as a productive and respected member of the citizenry and should incentivize him to better himself while incarcerated. We therefore conclude that a 40 years to life sentence is not the functional equivalent of life without parole.

IV.

DISPOSITION

The trial court's order is affirmed.

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CODRINGTON
J.

We concur:

RAMIREZ
P. J.

MENETREZ
J.