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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY MCGUIRE,

Defendant and Appellant.

B276692

(Los Angeles County
Super. Ct. No. TA115410)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kelvin D. Filer, Judge. Affirmed.

Patricia A. Scott, under appointment by the Court of Appeal, for Defendant and Appellant Anthony McGuire.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Shawn McGahey Webb, Supervising Deputy Attorney General and Ilana Herscovitz, Deputy Attorney General, for Plaintiff and Respondent.

Appellant Anthony McGuire appeals from re-sentencing after remand from this court. The appeal, filed for purposes of preserving issues for federal review, demonstrates no error under state law. We affirm.

FACTUAL AND PROCEDURAL HISTORY

Appellant, age 17 at the time the crimes at issue were committed, was convicted in 2009 of first degree murder (Pen. Code, §187, subd.(a))¹ and two counts of attempted premeditated murder (§§ 664, 187), with true findings on gang (§ 186.22 (b)(1)) and firearm enhancements (§ 12022.53, subd. (b)-(d)). In 2013, this court reversed his 90 years to life sentence on appeal and remanded the matter for resentencing, concluding the trial court had failed to consider the factors identified in *Miller v. Alabama* (2012) 567 U.S. 460 [132 S.Ct. 2455, 183 L.Ed.2d 407] and *People v. Caballero* (2012) 55 Cal.4th 262.²

On remand, the trial court conducted a new sentencing hearing, and sentenced McGuire to an aggregate state prison term of 50 years to life. McGuire appealed that sentence, and, concluding the trial court had not considered all of the required factors, we reversed and remanded for resentencing.³

On July 18, 2016, the trial court again considered McGuire's sentence. At the close of the hearing, after receiving documents from McGuire's counsel relevant to his education and personal characteristics, the trial court sentenced McGuire to 50

¹ All further statutory references are to the Penal Code.

² *People v. McGuire* (July 15, 2013, B232593) [nonpub. opn.].

³ *People v. McGuire* (October 13, 2015, B259710) [nonpub. opn.].

years to life on Count 1, and to concurrent terms of life with the possibility of parole, with a minimum parole eligibility term of 15 years under section 186.22, subdivision (b)(5) and a consecutive term of 25 years to life pursuant to section 12022.53, subdivision (d) on Counts 2 and 3. McGuire appealed, arguing that the term of 50 years to life is cruel and unusual punishment, and that the California Supreme Court erred in *People v. Franklin* (2016) 63 Cal.4th 261.

DISCUSSION

Appellant acknowledges, as he must, that the Supreme Court's decision in *Franklin* bound the trial court, and binds this court. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455 [decisions of the California Supreme Court "are binding on and must be followed by all the state courts of California"].) Nonetheless, he asserts as a federal issue that the *Franklin* court erred in determining that the mandatory parole eligibility determination provided by law (§ 3051) resolved the constitutional issues he raises. We agree that he has not forfeited this issue. Under *Auto Equity*, however, we are bound by the decision in *Franklin*, and cannot provide the relief he requests. Accordingly, we affirm the judgment.

DISPOSITION

The judgment is affirmed.

ZELON, Acting P. J.

We concur:

SEGAL, J.

SMALL, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.