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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

DERAN HOWARD,

Defendant and Appellant.

B280936

(Los Angeles County
Super. Ct. No. MA068637)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Kathleen Blanchard, Judge. Affirmed.

Vanessa Place, under appointment by the Court of Appeal,
for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief
Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Susan Sullivan Pithey and Esther P. Kim,
Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant was convicted of committing a lewd act on a child, and as a result he was required to register as a sex offender. On appeal, defendant argues that the sex offender registration requirement is unconstitutional as applied to him because the residency restrictions constitute cruel and unusual punishment barred by the Eighth Amendment to the United States Constitution. We reject his argument and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Following a jury trial, defendant was convicted of committing a lewd act upon a child. (Pen. Code, § 288, subd. (c)(1).¹) The crime consisted of defendant, age 30 at the time, touching a minor, age 14 at the time, on her vagina over her clothing.

The court sentenced defendant to prison for eight months, and imposed various fines and fees. The court informed defendant that he would be required to register as a sex offender, and defendant did not object. Defendant timely appealed.

DISCUSSION

“On November 7, 2006, the voters enacted Proposition 83, the Sexual Predator Punishment and Control Act: Jessica’s Law (Prop. 83, as approved by voters, Gen. Elec. (Nov. 7, 2006)[.]).” (*In re E.J.* (2010) 47 Cal.4th 1258, 1263.) “Among other revisions to the Penal Code, Proposition 83 amended section 3003.5, a statute setting forth restrictions on where certain sex offenders subject to the lifetime registration requirement of section 290 may reside.” (*Ibid.*, fns. omitted.) Section 3003.5 prohibits registered sex offenders from living in single-family dwellings

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

with other registered sex offenders who are not related to them, or within 2000 feet of any school or park. (§ 3003.5, subds. (a) and (b).)

Defendant argues that imposition of the residency requirements in section 3003.5 “constitutes cruel and unusual punishment in violation of the Eighth Amendment as applied to” defendant, and therefore the restrictions “should be stricken.” “[T]he Eighth Amendment guarantees individuals the right not to be subjected to excessive sanctions.” (*Roper v. Simmons* (2005) 543 U.S. 551, 560.) “We review de novo questions of interpretation and constitutionality of a statute.” (*Finberg v. Manset* (2014) 223 Cal.App.4th 529, 532.)

The Attorney General asserts that defendant’s challenge to the registration requirements has been forfeited because defendant did not object in the trial court. “A defendant’s failure to contemporaneously object that his sentence constitutes cruel and unusual punishment forfeits the claim on appellate review.” (*People v. Speight* (2014) 227 Cal.App.4th 1229, 1247.) Defendant did not object to his sentence below, and therefore his challenge to the constitutionality of the residency requirements in section 3003.5 has been forfeited.²

Even if defendant had not forfeited this challenge, any objection to the residency requirement as cruel and unusual punishment would have been futile—a fact defendant acknowledges. The California Supreme Court has held that the

² Defendant asks that we exercise our discretion to excuse his forfeiture. We decline to do so. An “appellate court’s discretion to excuse forfeiture should be exercised rarely and only in cases presenting an important legal issue.” (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) This is not such a case.

residency restrictions in section 3003.5 do not constitute “punishment.” (*People v. Mosley* (2015) 60 Cal.4th 1044, 1069 (*Mosley*) [the residency restrictions in section 3003.5 are not “facially punitive in intent or effect”]; see also *In re Alva* (2004) 33 Cal.4th 254, 286 [“sex offender registration is not punishment for purposes of the Eighth Amendment”].) Because the residency restrictions do not constitute punishment, they are not cruel and unusual punishment for purposes of the Eighth Amendment.

Defendant asserts that *In re Taylor* (2015) 60 Cal.4th 1019 (*Taylor*) demonstrates that the statute is, in fact, punitive. In *Taylor*, the California Supreme Court held that the residency restrictions in section 3003.5 were unconstitutional as applied to parolees in San Diego County. Evidence presented at a hearing in the trial court demonstrated that “[b]lanket enforcement of the residency restrictions against these parolees has severely restricted their ability to find housing in compliance with the statute, greatly increased the incidence of homelessness among them, and hindered their access to medical treatment, drug and alcohol dependency services, psychological counseling and other rehabilitative social services available to all parolees, while further hampering the efforts of parole authorities and law enforcement officials to monitor, supervise, and rehabilitate them in the interests of public safety. It thus has infringed their liberty and privacy interests, however limited, while bearing no rational relationship to advancing the state’s legitimate goal of protecting children from sexual predators, and has violated their basic constitutional right to be free of unreasonable, arbitrary, and oppressive official action.” (*Id.* at p. 1023.)

Here, the reasoning of *Taylor* does not support defendant’s argument. First, *Taylor* did not address the Eighth Amendment,

and therefore it does not support defendant's sole contention that the residency requirement constitutes cruel and unusual punishment under that amendment. Second, defendant has not presented any evidence demonstrating that the residency restrictions limit his access to housing, medical services, drug treatment, psychological counseling, or any other social services. Instead, defendant's appellate brief cites various news articles, law journals, and other sources to make sweeping, non-specific conclusions, such as, "Practically speaking, sex offenders, including [defendant], cannot now live anywhere in the three largest cities in the state." Defendant also asserts, citing case law, that the "residency restrictions uniformly impinge on the registrant's right to travel, his right to own property [citations], his ability to seek employment, and his various freedoms of personal and expressive association [citation]."

As the Court stated in *Taylor*, an as-applied challenge to an otherwise valid statute "*contemplates analysis of the facts of a particular case or cases to determine the circumstances in which the statute . . . has been applied and to consider whether in those particular circumstances the application deprived the individual to whom it was applied of a protected right. [Citations].*" (*Taylor, supra*, 60 Cal.4th at p. 1039.) The holding in *Taylor* addressed the facts of that case: the specific effects of residency requirements on parolees in San Diego County. Those facts are not applicable here, where no evidence has been presented to demonstrate the effect of section 3003.5's residency restrictions on the constitutional rights of defendant or any other registered sex offender in Los Angeles County. "There is no doubt that the residency restrictions of Jessica's Law can produce significant difficulties and inconveniences in particular areas and individual

cases.” (*Mosely, supra*, 60 Cal.4th at p. 1065.) Standing alone, these difficulties and inconveniences do not render the residency restrictions unconstitutional.

We therefore reject defendant’s challenge to the residency restrictions in section 3003.5 as cruel and unusual punishment under the Eighth Amendment to the United States Constitution.

DISPOSITION

Affirmed.

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COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.