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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. KEVIN DEON ADAMS, Defendant and Appellant.	B271502 (Los Angeles County Super. Ct. Nos. YA082090 & YA082102)

APPEAL from a judgment of the Superior Court of Los Angeles County. Alan B. Honeycutt, Judge. Affirmed.

Alex Green, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris and Xavier Becerra, Attorneys General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Shawn McGahey Webb, Supervising Deputy Attorney General, Gary A. Lieberman, Deputy Attorney General, for Plaintiff and Respondent.

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Kevin Deon Adams (defendant) committed two sets of crimes soon after his 18th birthday—he kidnapped, raped and tried to murder a woman, then a month later opened fire on two other young men. Defendant now complains that he is entitled to a hearing, pursuant to *People v. Franklin* (2016) 63 Cal.4th 261 (*Franklin*), at which he can create a record of mitigating evidence tied to his youth for later use at a youth offender parole hearing under Penal Code section 3051.[1] The People have pointed out that defendant's aggravated sex crime convictions render him ineligible for a youth offender parole hearing, so defendant raises two new arguments in his reply brief—namely, (1) that denying aggravated sex offenders a youth offender parole hearing violates equal protection, and (2) his total combined prison sentence of 18 years and 4 months, plus 120 years to life, plus two life sentences constitutes cruel and unusual punishment under the law constraining the length of juvenile sentences. We asked for supplemental briefing so we can address these late-raised arguments on their merits. Because none of defendant's arguments has merit, we affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Defendant's Age

Defendant was born in April 1993, and turned 18 years old in April 2011.

II. The Kidnapping-Rape-Attempted Murder Case

In May 2011, defendant and a juvenile male robbed a female prostitute at gunpoint; dragged her into their car; took turns raping, sexually assaulting and physically assaulting her as they drove around; and then tried to shoot her when they were

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

done. She survived and escaped only because the gun malfunctioned.

The People charged defendant with (1) second degree robbery (§ 211), (2) kidnapping to commit another crime (§ 209, subd. (b)(1)), (3) forcible rape in concert (§ 264.1, subd. (a)), (4) forcible oral copulation in concert (§ 288a, subd. (d)(1)), (5) assault by means likely to produce great bodily injury (§ 245, subd. (a)(1)), and (6) willful, deliberate and premeditated attempted murder (§§ 187, subd. (a) & 664). The People further alleged two circumstances that aggravated the sex crimes under our "One Strike" law—namely, that defendant used a firearm in the commission of the sex offenses and that he kidnapped the victim. (§ 667.61, subds. (a), (d) & (e).) The People also alleged that the crimes were committed for the benefit of, at the direction of, or in association with a criminal street gang (§ 186.22) and that defendant personally used a firearm (§§ 12022, subd. (a)(1), 12022.53, subds. (b) & (e)).

After a jury found defendant guilty of all crimes and found true the One Strike and other allegations, the trial court sentenced defendant to state prison for a determinate term of 18 years and 4 months (for the assault and robbery charges), to be followed by an indeterminate term of 70 years to life (for the forcible rape and oral copulation charges), to be followed by two life sentences (for the kidnapping to commit rape and attempted murder charges).

Defendant's convictions were affirmed on appeal, although the Court of Appeal stayed his life sentence on the kidnapping count and ordered modifications of his custody credits and fines. Our Supreme Court denied review.

III. The Dual Attempted Murder Case

In June 2011, defendant pulled up alongside a parked car and opened fire on two brothers, ages 19 and 21 at the time. Both were shot in the face and sustained serious injuries. When defendant was subsequently arrested for the shootings, he was in possession of stolen property.

The People charged defendant with two counts of willful, deliberate and premeditated attempted murder (§§ 187, subd. (a) & 664), and one count of receiving stolen property (§ 496, subd. (a)). With respect to the attempted murder counts, the People also alleged that defendant personally discharged a firearm causing great bodily injury (§ 12022.53, subd. (d)) and that he personally inflicted great bodily injury (§ 12022.7, subd. (a)).

A jury convicted defendant of all crimes and found true all enhancements.

The trial court imposed a consecutive prison sentence of 25 years to life on each attempted murder count and a concurrent two-year sentence on the receiving stolen property count. The court imposed these sentences consecutively to the sentences imposed in the kidnapping-rape-attempted murder case, for a total combined sentence of 18 years and 4 months determinate, followed by 120 years to life, followed by two life sentences (which, after the appellate court's prior ruling, is now just one life sentence).

IV. Defendant's Appeal

Defendant filed this timely appeal.

DISCUSSION

I. Entitlement to *Franklin* Hearing

In a series of cases, the United States Supreme Court and our Supreme Court have held that it is cruel and unusual

punishment, when sentencing persons who were juveniles at the time of their crime(s), to impose a custodial sentence that amounts to a de facto sentence of life without the possibility of parole without first considering juveniles' (1) lack of maturity, impulsiveness and underdeveloped sense of responsibility, (2) vulnerability to negative influences and limited control over their own environment, and (3) lack of well-formed character. (*Miller v. Alabama* (2012) 567 U.S. __ [132 S.Ct. 2455, 2464, 183 L.Ed.2d 407] (*Miller*); *Graham v. Florida* (2010) 560 U.S. 48, 68-69, 74-75 [130 S.Ct. 2011, 176 L.Ed.2d 825] (*Graham*); *People v. Caballero* (2012) 55 Cal.4th 262, 266-269 (*Caballero*).) To comply with this constitutional mandate, our Legislature enacted section 3051, which grants anyone "under 23 years of age at the time of his or her" crime the right to a "youth offender parole hearing" to be held 15, 20 or 25 years after the imposition of sentence to enable the defendant to seek parole based on his or her "diminished culpability [as a] juvenile[] as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity . . . ." (§§ 3501, subds. (a)(1) & (b), 4801, subd. (c); Stats. 2013, ch. 312, § 1.) In *Franklin*, our Supreme Court held that a juvenile is entitled to an "adequate opportunity . . . to make a record of mitigating evidence tied to his youth"—either at sentencing or, failing that, at a separate hearing—for use at the youth offender parole hearing to which he or she is entitled under section 3051. (*Franklin*, *supra*, 63 Cal.4th at pp. 268-269, 283-284.)

Defendant is not entitled to an evidentiary hearing under *Franklin* because he is not entitled to a youth offender parole hearing under section 3051 in the first place. Section 3051 does not apply to persons, like defendant, sentenced under our state's

One Strike law or, for that matter, our state's Three Strikes law (§§ 667, subds. (b)-(j) & 1170.12, subds. (a)-(d)). (§ 3051, subd. (h).) Defendant concedes as much in his reply brief.

II. Equal Protection Challenge

Under the equal protection guarantees of the federal and California Constitutions, "persons similarly situated . . . should receive like treatment." (*People v. Morales* (2016) 63 Cal.4th 399, 408; U.S. Const., 14th Amend., § 1; Cal. Const., art. I, § 7.) To establish a violation of this guarantee, a person must establish that (1) """the state has adopted a classification that affects two or more""" groups that are """similarly situated for purposes of the law challenged""" """in an unequal manner"""; and (2) the classification is not rationally related to a legitimate state purpose or, if the classification involves a suspect class or fundamental right, it is not narrowly tailored to further a compelling state interest. (*Morales*, at p. 408; *People v. Wilkinson* (2004) 33 Cal.4th 821, 836-837 (*Wilkinson*).)

Defendant's argument—that section 3051 violates equal protection by denying a youth offender parole hearing to juveniles sentenced under the One Strike law for aggravated sex crimes—was specifically rejected in *People v. Bell* (2016) 3 Cal.App.5th 865, review granted on other grounds, January 11, 2017, S238339 (*Bell*). The *Bell* court assumed that all juveniles committed to long prison sentences were similarly situated (despite differences in their criminal histories), but concluded that our Legislature had a rational and legitimate reason for excluding aggravated sex offenders sentenced under the One Strike law from the benefits of section 3051—namely, the Legislature's intent to protect the public by generally excluding recidivists from section 3051 relief (as reflected by the denial of such relief to persons sentenced

under the One Strike law *and* the Three Strikes law), and by guarding specifically against the recidivism of sex offenders (as reflected in section 3051, in the law regarding sexually violent predators (Welf. & Inst. Code, § 660 et seq.) and in the law regarding mentally disordered offenders (§ 2690 et seq.)). (*Bell*, at pp. 876-880.)

In coming to its conclusion, *Bell* rejected the argument that differences in the length of incarceration infringe upon a person's fundamental right to liberty (thereby invoking strict judicial scrutiny) under *People v. Olivas* (1976) 17 Cal.3d 236, noting that *Olivas'*s broad language to that effect had been subsequently curtailed in *Wilkinson*, *supra*, 33 Cal.4th at pages 837-839. (*Bell*, *supra*, 3 Cal.App.5th at pp. 876-878, review granted; see also *Wilkinson*, at p. 838 [a defendant "'does not have a fundamental interest in a specific term of imprisonment'" because so recognizing "would be incompatible with the broad discretion the Legislature traditionally has been understood to exercise in defining crimes and specifying punishment"].) *Bell* also rejected the argument, based on a Department of Corrections and Rehabilitation, 2010 Juvenile Justice Outcome Report, that juvenile sex offenders on parole recidivate less often than those who commit other crimes; the *Bell* court noted that the 2010 Report did not compare the recidivism of juvenile sex offenders with juvenile homicide offenders and further observed that "one report that reaches contrary conclusions" does not "mean that the Legislature's classification of crimes is unreasonable." (*Bell*, at pp. 878-880.)

Defendant says *Bell* was wrongly decided and, in support of that view, rehashes many of the arguments the *Bell* court rejected. We agree with *Bell'*s analysis as applied to offenders

who are 18 or older, and, on that basis, decline defendant's invitation to part ways with *Bell*.

III. Cruel and Unusual Punishment

The cruel and unusual punishment clause's mandate that courts consider the "hallmarks of youth" when sentencing juvenile offenders applies solely to juveniles—that is, persons under the age of 18 at the time of their crime. (See, e.g., *Miller*, *supra*, 132 S.Ct. at p. 2460; *Graham*, *supra*, 560 U.S. at pp. 74-75; *Caballero*, *supra*, 55 Cal.4th at p. 266.) Because defendant was 18 years old—and hence not a juvenile—at the time he committed both sets of crimes implicated in this appeal, his Eighth Amendment rights are not violated by our Legislature's decision to deny him a youth offender parole hearing.

Defendant resists this conclusion, arguing that he was just weeks past his 18th birthday when he went on his crime sprees. In his view, "'youth is more than a chronological fact'" (*Miller*, *supra*, 132 S.Ct. at p. 2467, quoting *Eddings v. Oklahoma* (1982) 455 U.S. 104, 115), and many persons 18 and over suffer from the same psychological and developmental infirmities as juveniles. The United States Supreme Court has rejected defendant's argument. In *Roper v. Simmons* (2005) 543 U.S. 551, the court explained: "Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach. . . . The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the [Eighth Amendment] line for death eligibility ought to rest." (*Id.*

at p. 574; *Graham*, *supra*, 560 U.S. at pp. 74-75 [same]; *People v. Gutierrez* (2014) 58 Cal.4th 1354, 1380 [same]; see also *People v. Gamache* (2010) 48 Cal.4th 347, 404-405 [declining to extend protections granted to juvenile offenders to an 18 year old]; *People v. Perez* (2016) 3 Cal.App.5th 612, 617 [same]; *People v. Abundio* (2013) 221 Cal.App.4th 1211, 1220-1221 [same]; *People v. Argeta* (2012) 210 Cal.App.4th 1478, 1482 [same].)

In support of his contrary position, defendant cites *Hall v. Florida* (2014) 572 U.S. __ [134 S.Ct. 1986, 188 L.Ed.2d 1007] and *People v. Clark* (Ill.Ct.App. 2007) 869 N.E.2d 1019. Neither decision dictates a different result. In *Hall*, the court refused to limit the Eighth Amendment's bar on the execution of persons with "intellectual disabilit[ies]" to only those whose IQ's are 70 or lower. (*Hall*, 134 S.Ct. at p. 1990.) In so holding, *Hall* eschewed defining the constitutional line for "intellectual disability" solely by one's IQ. In this case, however, defendant is not asking us to place limits on how we define the constitutional line for juveniles; he is asking us to move that line to offenders of any age who have the psychological or developmental make-up of juveniles. The court in *Clark* reduced an 18 year old's sentence in light of certain mitigating factors; it had nothing to do with the constitutional limits on juvenile sentences, and thus provides no basis for ignoring binding United Supreme Court precedent on point. (*Clark*, at pp. 1036, 1038-1039, 1041-1042.)

DISPOSITION

The judgment is affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ