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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.

DANIEL JOSEPH LARA,

Defendant and Appellant.

B258181

(Los Angeles County
Super. Ct. No. GA072069)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Larry Paul Fidler, Judge. Affirmed.

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

Kamala D. Harris, Attorney General, Gerard A. Engler, Chief Assistant
Attorney General, Lance E. Winters, Assistant Attorney General, Steven D.
Matthews and Corey J. Robins, Deputy Attorneys General, for Plaintiff and
Respondent.

INTRODUCTION

Daniel Joseph Lara was convicted on four counts of attempted murder, and was sentenced to 40 years to life in prison. He appeals from the sentence, contending that it violates the Eighth Amendment's prohibition against cruel and unusual punishment, as he was a juvenile (17 years old) when he committed the crimes, and by the time he is eligible for parole, he will no longer have any "meaningful life expectancy." He further contends the trial court failed to consider his youth when it sentenced him. For the reasons stated below, we conclude there was no sentencing error. Accordingly, we affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY¹

On the evening of January 13, 2008, appellant engaged in four separate gang-related shootings. In the first incident, appellant and his fellow gang members were driving to a party located in a rival gang's territory when they noticed Lawrence Bell and several other men standing outside a house. They stopped the car in front of the house, and yelled out their gang name. After the other men denied being gang members, appellant, who was sitting in the right rear passenger seat of the vehicle, pulled out a gun and fired multiple shots at them. Bell was hit in the leg.

Appellant and his fellow gang members then drove to a location that one of them had previously "tagged" with gang-related graffiti. Someone had crossed out the graffiti, and the group wanted to remedy the "disrespect." They came upon a group of Hispanic men. After one of the men denied crossing out the graffiti,

¹ Because appellant does not challenge the factual basis for his convictions and raises only sentencing issues on appeal, we provide an abbreviated summary of the facts and procedural history.

appellant opened the right rear car door and fired several shots at him. Juan Mendoza, who was standing nearby, was hit in the leg.

Appellant and his fellow gang members drove away. A few minutes later, appellant said he wanted to “finish[] off what he started.” The group then stopped the vehicle, exited, and ran back to the crime scene. As appellant approached the Hispanic men, he drew his gun and fired three or four times. Hector Guzman was hit in the right arm.

After this incident, appellant and his fellow gang members drove to Old Town Pasadena to rob someone for money to buy food. They came upon a man sitting alone on a bench who stared at them. A gang member exited the vehicle and assaulted the man. Appellant also exited the car, and fired a shot at the victim. The two gang members then got back into the vehicle and fled.

Appellant was later arrested and charged with the offenses. A jury convicted him of the attempted premeditated and deliberate murders of Bell, Mendoza and Guzman. It also convicted him of discharging his firearm at Mendoza from a motor vehicle, and discharging a firearm in a grossly negligent manner at a dwelling. Finally, the jury also found true the related gang and gun enhancement allegations.

The parties briefed sentencing in light of *Graham v. Florida* (2010) 560 U.S. 48 (*Graham*) and *People v. Caballero* (2012) 55 Cal.4th 262 (*Caballero*). At the sentencing hearing, the trial court recognized that, in light of appellant’s age, imposition of the maximum sentence – 120 years to life -- would contravene existing United States and California Supreme Court decisions. The court sentenced appellant to identical concurrent terms of 15 years to life on each of the attempted murder counts, plus 25 years for the firearm enhancement, for a total of

40 years to life. The court also imposed sentences on the remaining counts, but stayed those terms pursuant to Penal Code section 654.

Appellant filed a timely notice of appeal.

DISCUSSION

Under the Eighth Amendment’s prohibition against cruel and unusual punishment, a juvenile convicted of nonhomicide offenses may not be sentenced to life without the possibility of parole. (*Graham, supra*, 560 U.S. at p. 82.) “A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term.” (*Ibid.*)

In *Caballero*, the California Supreme Court followed *Graham* and vacated a 110-year-to-life sentence imposed on a juvenile convicted of attempted murder, concluding that the sentence amounted to the functional equivalent of life without the possibility of parole. (*Caballero, supra*, 55 Cal.4th at p. 265.) The court concluded that “sentencing a juvenile offender for a nonhomicide offense to a term of years with a parole eligibility date that falls outside the juvenile offender’s natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment. Although proper authorities may later determine that youths should remain incarcerated for their natural lives, the state may not deprive them at sentencing of a meaningful opportunity to demonstrate their rehabilitation and fitness to reenter society in the future.” (*Id.* at p. 268.) In examining an offender’s “natural life expectancy,” the court noted that “‘life expectancy’ means the normal life expectancy of a healthy person of defendant’s age and gender living in the United States.” (*Id.* at p. 267, fn. 3.) Finally, the court stated that “the sentencing court must consider all mitigating circumstances attendant in the juvenile’s crime and life, including but not limited to his or her chronological age at the time of the

crime, whether the juvenile offender was a direct perpetrator or an aider and abettor, and his or her physical and mental development, so that it can impose a time when the juvenile offender will be able to seek parole from the parole board.” (*Id.* at pp. 268-269.)

Appellant contends his sentence of 40 years to life amounts to the functional equivalent of life without the possibility of parole, as he will have no meaningful life expectancy at the time he becomes eligible for parole. We disagree.

Appellant will be eligible for parole at age 57. As he acknowledges, the United States Social Security Administration Actuarial Life Table places a 17-year-old male’s natural life expectancy at nearly 77 years. (United States Social Security Administration Actuarial Life Tables, 2011, available at <<http://www.ssa.gov/oact/STATS/table4c6.html>> [as of Sept. 16, 2015].) Accordingly, appellant’s life expectancy will exceed his minimum parole period by at least 19 years. Nineteen years constitutes a meaningful life expectancy. (Compare *People v. Garcia* (2015) 237 Cal.App.4th 666, 689 [50-year-to-life sentence for 17-year-old offender did not violate Eighth Amendment, as defendant’s life expectancy exceeded minimum parole period by at least 10 years] with *People v. Speight* (2014) 227 Cal.App.4th 1229, 1249 [noting that parole eligibility date five months before defendant’s natural life expectancy constituted a de facto life sentence].)

Without citation to authority, appellant contends we should consider the “unhealthy conditions and rigors of prison life” in determining whether he would have a meaningful life expectancy after becoming eligible for parole. Appellant’s contention was effectively rejected in *Caballero*. There, the court stated that in determining life expectancy, the sentencing court should use the “normal life expectancy for a healthy person of defendant’s age and gender living in the United

States.” No allowance was made for any particular locale or living conditions. In short, appellant’s sentence was constitutional, as it was not an actual or de facto sentence of life without the possibility of parole.²

Finally, we reject appellant’s contention that the case should be remanded for resentencing because the trial court failed to consider the “mitigating qualities of youth.” The court expressly noted that it was sentencing appellant pursuant to *Graham* and *Caballero*, indicating it had considered the sentencing factors set forth in those opinions.

DISPOSITION

The judgment is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.

² Because appellant’s sentence is not unconstitutional, we need not consider whether Penal Code section 3051 would also render the sentence constitutional.