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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

PEDRO HERNANDEZ,

Defendant and Appellant.

H052106

(Monterey County

Super. Ct. No. SS022244A)

In 2003, the trial court found appellant Pedro Hernandez guilty of murder and attempted murder, as well as firearm and gang enhancements as to both charges. The trial court subsequently sentenced Hernandez to a total term of 50 years to life in prison. Following an appeal, a different panel of this court directed the trial court to reduce Hernandez's total sentence to 40 years to life.

In 2024, Hernandez filed a petition requesting that his sentence be recalled and resentenced pursuant to Penal Code section 1170, subdivision (d)(1).¹ Following a hearing, the trial court denied Hernandez's petition on the basis that his 40 year to life sentence was not the functional equivalent of a life sentence without the possibility of parole (LWOP).

On appeal, Hernandez argues that the trial court erred in denying his petition for recall and resentencing because his sentence of 40 years to life is a de facto LWOP

¹ Unspecified statutory references are to the Penal Code.

sentence, and failing to resentence him violated his constitutional rights to equal protection of the law.

For the reasons discussed below, we find no merit to this contention and affirm the order denying the petition

I. FACTUAL AND PROCEDURAL BACKGROUND

A. *Factual Background*²

On August 13, 2002, around 7:30 p.m., Hernandez, who was armed with a handgun, and his neighbor were walking down the street in Salinas. A car pulled over, and the driver indicated he was a Sureño gang member. Hernandez then signaled that he was a Norteño gang member and shot into the car several times, hitting both the 17-year-old driver and his 15-year-old girlfriend, the passenger. The driver suffered a gunshot wound to the head but survived, but his girlfriend was killed.

B. *Procedural History*

1. *Charges, Trial, and Sentencing*

On February 5, 2003, the Monterey County District Attorney's Office filed a second amended information charging Hernandez with murder (§ 187; count 1) and attempted murder (§ 664, 187, subd. (a); count 2). The information further alleged as to both counts that Hernandez committed the offenses for the benefit of, at the direction of, or in association with a criminal street gang (§ 186.22, subd. (b)) (gang enhancement) and he personally and intentionally discharged a firearm, a handgun, which caused death to the victim in count 1 (§ 12022.53, subds. (c)–(d)).

² On our own motion, we take judicial notice of our opinion in Hernandez's first appeal in the same matter, *People v. Hernandez* (March 26, 2004, H026017) [nonpub. op.] (*Hernandez*)). (Evid. Code, §§ 452, subd. (d)(1), 459, subd. (a).) We derive our brief summary of the underlying facts from the unpublished opinion in *Hernandez*.

On March 27, 2003, following a bench trial, the trial court found Hernandez guilty of second degree murder and attempted murder, and found true the gang enhancement and firearm allegations as to both counts.

On May 15, 2003, the trial court sentenced Hernandez to a total term of 50 years to life in state prison, which consisted of the following: (1) 15 years to life for second degree murder in count 1 (§ 187), plus a consecutive term of 10 years for the gang enhancement (§ 186.22, subd. (b)) and a consecutive term of 25 years to life for the firearm enhancement (§ 12022.53, subd. (c)); and (2) a concurrent term of nine years for attempted second-degree murder in count 2 (§ 664, 187, subd. (a)), plus a stayed term of 10 years for the gang enhancement (§ 186.22, subd. (b)) and a concurrent term of 20 years to life for the firearm enhancement (§ 12022.53, subd. (d)).

Hernandez appealed his sentence, and a different panel of this court determined that the trial court erred in imposing a consecutive 10-year term for the gang enhancement in count 1 because the underlying sentence was a life term. (*Hernandez, supra*, H026017.) On remand, the trial court struck the sentence on the gang enhancement in count 1 and reduced Hernandez’s total sentence to 40 years to life. Upon resentencing, the trial court also awarded Hernandez a total of 302 days of credits (263 days of custody credits plus 39 days of conduct credits).

2. Section 1170, subdivision (d)(1) Resentencing Proceedings

On January 3, 2024, Hernandez filed a petition for recall and resentencing pursuant to section 1170, subdivision (d)(1) and *People v. Heard* (2022) 83 Cal.App.5th 608 (*Heard*). In a supplemental petition, Hernandez argued that his 40 years to life sentence was a de facto LWOP sentence because he would not have a “meaningful and realistic hope of release or a genuine opportunity to reintegrate” into society upon his release. In opposition, the People argued that Hernandez was not eligible for relief under section 1170, subdivision (d)(1) because his sentence was not the functional equivalent of LWOP. The People contended that even if Hernandez served the full length of his 40-

year sentence, he would be eligible for release on parole at age 58, which would still allow him a meaningful opportunity to reintegrate into society and rebuild his life.

The trial court held a hearing on Hernandez’s petition on April 25, 2024. After hearing argument from both parties, the trial court concluded that based on Hernandez’s opportunity to be paroled by age 58, he would “have the ability to participate in the workforce and make meaningful social connections outside of prison walls, which would hopefully incentivize him to better himself while in prison to make him a candidate for post-incarceration employment.” The trial court therefore concluded that the 40 years to life sentence was not the functional equivalent of LWOP and denied the petition for resentencing.

Hernandez timely appealed.

II. DISCUSSION

A. Requests for Judicial Notice

Prior to reaching the merits of the appeal, we first address Hernandez’s two requests for judicial notice (RJNs)³ of various facts and propositions that he claims are relevant to the determination of the issues raised on appeal.

1. Applicable Law and Standard of Review

A request for judicial notice in the court must be served and filed in a separate motion with a proposed order. (Cal. Rules of Court, rule 8.252(a)(1).) The motion must explain the relevance of the matter to the appeal; whether the matter to be noticed was presented to the trial court and whether judicial notice was taken; if the trial court did not judicially notice the matter, why the matter is subject to judicial notice under Evidence Code section 451, 452 or 453; and whether the matter concerns proceedings after the order or judgment that is the subject of the appeal. (Rule 8.252(a)(2).)

³ By separate order, we deferred ruling on Hernandez’s RJNs for consideration with the merits of the appeal.

“Reviewing courts generally do not take judicial notice of evidence not presented to the trial court.” (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3.) Judicial notice should be taken only of relevant matters. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1135, fn. 1 (*Ketchum*); *Aquila, Inc. v. Superior Court* (2007) 148 Cal.App.4th 556, 569.) “While we may take judicial notice of the existence of judicial opinions, court documents, and verdicts reached, we cannot take judicial notice of the truth of hearsay statements in other decisions or court files [citation], or of the truth of factual findings made in another action.” (*Johnson & Johnson v. Superior Court* (2011) 192 Cal.App.4th 757, 768.)

“While courts may notice official acts and public records, ‘we do not take judicial notice of the truth of all matters stated therein.’ [Citations.] ‘[T]he taking of judicial notice of the official acts of a governmental entity does not in and of itself require acceptance of the truth of factual matters which might be deduced therefrom, since in many instances what is being noticed, and thereby established, is no more than the existence of such acts and not, without supporting evidence, what might factually be associated with or flow therefrom.’ [Citation.]” (*Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063–1064, disapproved on another ground in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1273.)

2. September 2024 RJN

In his September 2024 RJN, Hernandez requests that we take judicial notice of six documents: (1) the appellate record in *People v. Luis Olmos* (2025) 109 Cal.App.5th 580 (*Olmos*); (2) the Attorney General’s order and supplemental letter brief filed in *Olmos*; (3) the appellate record in *People v. Joseph Armando Bonilla* (Jan. 25, 2025, B336027) [nonpub. op.]; (4) the Attorney General’s brief filed in *Bonilla*; (5) the appellate record in *People v. Ramiro Munoz* (2025) 110 Cal.App.5th 499, review granted June 25, 2025, S290828 (*Munoz*); and (6) the Attorney General’s notice of new authority filed in *Munoz*. Hernandez argues that the records in the three listed cases are relevant because the issues

therein are “almost identical” to those in the instant matter, while the documents filed by the Attorney General reflect that the Attorney General’s concession that juvenile offenders sentenced to de facto life without possibility of parole sentences are eligible for relief under Penal Code section 1170, subdivision (d).

To the extent the Attorney General previously argued in similar cases that juvenile offenders sentenced to de facto LWOP sentences were not eligible for relief under section 1170, subdivision (d), and that *Heard, supra*, 83 Cal.App.5th 608 (which concluded the opposite) was wrongly decided (see, e.g., *People v. Sorto* (2024) 104 Cal.App.5th 435 (*Sorto*)), the Attorney General’s briefing in this case does not reflect he is now making such an argument. Accordingly, we find that the Attorney General’s position in these unrelated cases and the documents and record listed in the September 2024 RJN are no longer relevant. (See *Ketchum, supra*, 24 Cal.4th at p. 1135, fn. 1.) We therefore deny the September 2024 RJN.

3. July 2025 RJN

In his July 2025 RJN, Hernandez requested that this court take judicial notice of 6 exhibits (Exhibits A-F) containing the Board of Parole Hearings’ (BPH) annual Report of Significant Events for the years 2017 through 2021, which indicate that the BPH granted parole to fewer than 10 percent of first-time applicants in each of the years provided.⁴ While Hernandez acknowledges that he did not request judicial notice of the same documents in the trial court, he argues that the materials are relevant to the issue presented on appeal and asserts that judicial notice is appropriate as “the facts and propositions in the reports are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Evid. Code, § 452, subd. (h).)

⁴ According to the reports, the exact figures were 7.38 percent (285 of 2,104) in 2017, 6.64 percent (394 of 2,618) in 2018, 8.65 percent (515 of 4,459) in 2019, 9.55 percent (523 of 4,999) in 2020, and 9.21 percent (479 of 5,197) in 2021.

“Although Evidence Code section 459, subdivision (a) generally requires that a reviewing court must take judicial notice of matters the trial court judicially noticed, there are ... exceptions: (1) if the matter was not ‘properly noticed by the trial court,’ the appellate court is not required to take judicial notice...’ (Evid. Code, § 459, subd. (a).)” (*Mireskandari v. Gallagher* (2020) 59 Cal.App.5th 346, 360; see also *Brosterhous v. State Bar* (1995) 12 Cal.4th 315, 325–326 [“An appellate court may properly decline to take judicial notice under Evidence Code sections 452 and 459 of a matter which should have been presented to the trial court for its consideration in the first instance”]; *People v. Jacinto* (2010) 49 Cal.4th 263, 272, fn. 5 [“ ‘[A]n appellate court generally is not the forum in which to develop an additional factual record.’ ”].) Here, as Hernandez concedes, he did not present the same documents to the trial court during his hearing, despite them being available at the time. Accordingly, we find no basis to review documents and facts that should have been presented to the trial court for its consideration and deny Hernandez’s July 2025 RJN.

B. Hernandez’s Sentence Is Not the Functional Equivalent of LWOP

Hernandez argues that the trial court “misapplied the law” in determining that his sentence of 40 years to life was not a de facto LWOP sentence. Relying on *People v. Contreras* (2018) 4 Cal.5th 349 (*Contreras*), Hernandez claims that there is “little incentive” for a juvenile serving a term until near the end of his life to become a “more responsible person,” thus diminishing the likelihood of him reentering and reintegrating into the community upon his potential release on parole at age 58. Hernandez further contends that based on research regarding the average life expectancy of incarcerated offenders above the age of 50, there is a “strong likelihood” he will die in prison before he reaches the age of 58. In opposition, the Attorney General argues that because Hernandez’s sentence is neither LWOP nor the functional equivalent of LWOP, Hernandez is not entitled to recall and resentencing under section 1170, subdivision (d).

We agree with the Attorney General that Hernandez’s sentence is not de facto LWOP and therefore, he is not entitled to the benefit of section 1170, subdivision (d)(1).

1. Applicable Law and Standard of Review

In *Graham v. Florida* (2010) 560 U.S. 48, the United States Supreme Court held that the Eighth Amendment prohibits LWOP sentences for juvenile offenders who committed non-homicide offenses. (*Id.* at p. 82.) In response, the California Legislature enacted Senate Bill No. 9 (2011–2012 Reg. Sess.) (Senate Bill 9), effective January 1, 2013, which amended section 1170 by adding former subdivision (d)(2) (now subdivision (d)(1)). (Stats. 2012, ch. 828, § 1.) Pursuant to this subdivision, “[w]hen a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has been incarcerated for at least 15 years, the defendant may submit to the sentencing court a petition for recall and resentencing.” (§ 1170, former subd. (d)(2)(A)(i), now subd. (d)(1)(A).)

“The petition shall include the defendant’s statement that the defendant was under 18 years of age at the time of the crime and was sentenced to life in prison without the possibility of parole, the defendant’s statement describing their remorse and work towards rehabilitation, and the defendant’s statement that one of the following is true: [¶] (A) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law. [¶] (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. [¶] (D) The defendant has performed acts that tend to indicate 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).) “If the court finds by a preponderance of the evidence that one or more of the qualifying circumstances in the petition are true, the court must recall the defendant’s sentence and hold a hearing to resentence the defendant. (Id., subd. (d)(2)(E).)” (*In re Kirchner* (2017) 2 Cal.5th 1040, 1050.)

In *People v. Caballero* (2012) 55 Cal.4th 262, the California Supreme Court held that the prohibition on LWOP sentences for juvenile offenders convicted of non-homicide offenses also applies to “term-of-years sentence[s] that amount[] to the functional equivalent of a life without parole sentence.” (*Id.* at p. 268.) Pursuant to *Caballero*, a sentence is the functional equivalent of LWOP if it includes a “term of years with a parole eligibility date that falls outside the juvenile offender’s natural life expectancy.” (*Ibid.*)

In 2014, in an effort to conform California’s juvenile sentencing with *Graham* and *Caballero*, the Legislature enacted section 3051. (See Stats. 2013, ch. 312, § 4; *People v. Franklin* (2016) 63 Cal.4th 261, 268, 277 (*Franklin*).) Section 3051 requires the BPH to conduct a “youth offender parole hearing” at specified times during the incarceration of certain youthful offenders. (See § 3051, subds. (a)(1), (b); *Franklin, supra*, at p. 277.) Juvenile offenders convicted of a controlling offense “for which the sentence is a life term of 25 years to life shall be eligible for release on parole at a youth offender parole hearing during the person’s 25th year of incarceration.” (§ 3051, subd. (b)(3).) As of January 1, 2018, most juvenile offenders sentenced to explicit LWOP terms are also eligible for parole during their 25th year of incarceration. (§ 3051, subd. (b)(4), as amended by Stats. 2017, ch. 684, § 1.5.)

In interpreting the language of a statute, the principles of statutory construction are well established. “ ‘ “Our task is to discern the Legislature’s intent. The statutory language itself is the most reliable indicator, so we start with the statute’s words, assigning them their usual and ordinary meanings, and construing them in context. If the words themselves are not ambiguous, we presume the Legislature meant what it said, and

the statute's plain meaning governs. On the other hand, if the language allows more than one reasonable construction, we may look to such aids as the legislative history of the measure and maxims of statutory construction. In cases of uncertain meaning, we may also consider the consequences of a particular interpretation, including its impact on public policy." [Citation.] " 'If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose.' [Citation.] ... '[A] construction making some words surplusage is to be avoided.' [Citation.] 'When used in a statute [words] must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear.' [Citations.] Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole." ' ' ' (*DeNike v. Mathew Enterprise, Inc.* (2022) 76 Cal.App.5th 371, 378.)

We review the interpretation of a statute de novo. (*City of Saratoga v. Hinz* (2004) 115 Cal.App.4th 1202, 1212, citing *People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432.)

2. Analysis

In arguing that 40 years to life should be considered a de facto LWOP sentence, Hernandez contends that there is "little to no meaningful difference" between this sentence and the 50 years to life sentence at issue in *Contreras, supra*, 4 Cal.5th 349, given the "bleak prospects" he would have to reintegrate into society upon release at age 58, which would reduce any incentive he might have to reform and rehabilitate while waiting to be paroled. In opposition, the Attorney General argues that *Contreras* does not support Hernandez's argument because Hernandez's future parole suitability hearings, and expected age at his release, will allow him a meaningful opportunity to reintegrate into society and become a productive citizen "in the second half" of his lifetime.

In *People v. Perez* (2013) 214 Cal.App.4th 49 (*Perez*), the Fourth District Court of Appeal analyzed several California cases considering whether the imposition of various

sentences constituted the functional equivalent of life without parole. (*Id.* at pp. 55–57.) The court observed: “There is a bright line between LWOP’s and long sentences *with* eligibility for parole if there is some meaningful life expectancy left when the offender becomes eligible for parole. We are aware of—and have been cited to—no case which has used the *Roper-Graham-Miller-Caballero* line of jurisprudence to strike down as cruel and unusual any sentence against anyone under the age of 18 where the perpetrator still has substantial life expectancy left at the time of eligibility for parole.” (*Id.* at p. 57, original italics, footnote omitted.) In *Perez*, the defendant, who was sentenced to 30 years to life for several non-homicide offenses, would be eligible for parole at 47 years of age. (*Id.* at p. 58.) The court therefore rejected the argument that his sentence constituted a “de facto” sentence of LWOP, and concluded the sentence was constitutional under both the federal and state Constitutions. (*Id.* at pp. 58–59.)

As noted above, Hernandez primarily relies on *Contreras*, *supra*, 4 Cal.5th 349, which held that sentences of 50 years to life and 58 years to life for nonhomicide offenses committed by two 16-year-old defendants violated the Eighth Amendment. (*Contreras*, *supra*, at p. 356.) While acknowledging its prior holding in *Franklin* that 25 years to life was not the functional equivalent of LWOP (*Contreras*, *supra*, at p. 359), the court concluded a term of 50 years to life 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.” (*Id.* at p. 368.) Hernandez also cites *Heard*, *supra*, 85 Cal.App.5th 608, where the Fourth District Court of Appeal concluded that juvenile offenders sentenced to the functional equivalent of LWOP were similarly situated to juvenile offenders actually sentenced to LWOP, and were therefore eligible for resentencing relief under section 1170, subdivision (d)(1). (*Heard*, *supra*, at pp. 627–634.)

However, we find *Contreras* not to be controlling here and similarly find *Heard* to be factually distinguishable. In the instant matter, Hernandez was sentenced to 40 years to life for murder and attempted murder, with associated firearm enhancements for both

counts. In addition, unlike the defendants in *Heard* and *Contreras*, Hernandez is not serving a sentence of 103 years to life, 50 years to life, or 58 years to life. (*Heard, supra*, 83 Cal.App.5th at pp. 613–614; *Contreras, supra*, 4 Cal.5th at p. 356.) Indeed, recent cases have similarly found sentences shorter than 50 years to life, including a 40 year to life sentence like the one at issue here, were not the functional equivalent of LWOP when the offenders would still be able to realistically be released during their expected lifetimes. (*Munoz, supra*, 110 Cal.App.5th at pp. 508–511 [finding that a 40 year to life sentence was not the functional equivalent of LWOP]; see also *Olmos, supra*, 109 Cal.App.5th at p. 583 [finding that a 33 year to life sentence was “readily distinguishable” from the much longer sentences in *Heard*, *Sorto*, and *Contreras* such that it did not constitute the functional equivalent of LWOP].)

The record supports that Hernandez will have the opportunity for release on parole at age 58, which Hernandez does not appear to dispute. Accordingly, if Hernandez were to be granted parole at 58, he will have the opportunity to rejoin society for a sufficient period to achieve reintegration as a productive and respected member of the community. The possibility of release at 58 also provides an incentive to rehabilitate while in custody and is in line with the penological goals for sentencing those who commit murder and attempted murder.

As noted above, in his request for judicial notice, Hernandez presented statistics to demonstrate that very few defendants are granted parole at their initial hearing. Even if we were to take judicial notice of these statistics, it would be inappropriate to speculate about how Hernandez may conduct himself during his period of incarceration and what actions the parole board may take when he is eligible for parole.

In conclusion, we find that Hernandez’s sentence is not the functional equivalent of life without the possibility of parole. Therefore, the trial court did not err in denying his petition for recall and resentencing pursuant to section 1170, subdivision (d)(1).

III. DISPOSITION

The court's order denying Hernandez's petition for recall and resentencing is affirmed.

WILSON, J.

WE CONCUR:

GROVER, ACTING P. J.

LIE, J.