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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(San Joaquin)

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THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE ARTURO HERNANDEZ,

Defendant and Appellant.

C067260

(Super. Ct. No. SF113661D)

OPINION ON REMAND

Defendant Jose Arturo Hernandez was convicted of two counts of attempted murder and five other charges and sentenced to an effective term of 68 years to life in prison for crimes he committed when he was 16 years old.<sup>1</sup> On appeal, he contends his trial attorney was ineffective because: (1) his attorney did not move to suppress his

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<sup>1</sup> Defendant was born in October 1993; the crimes of which he was convicted occurred in December 2009.

confession; and (2) his attorney did not object to his sentence as violating the constitutional proscription against cruel and unusual punishment.

Originally, we found no ineffective assistance in counsel's failure to move to suppress the confession because such a motion would have had no merit, but the majority of the panel found that defendant's sentence was unconstitutional and remand for resentencing was compelled by the Eighth Amendment because defendant was denied a meaningful opportunity at sentencing to demonstrate his rehabilitation and fitness to reenter society in the future, and the sentencing court did not consider all mitigating circumstances attendant in his crime and life. In reaching this conclusion, the panel majority rejected the People's argument that Penal Code section 3051, which became effective on January 1, 2014, mooted defendant's constitutional challenge to this sentence.<sup>2</sup> Accordingly, we reversed and remanded for resentencing.

The California Supreme Court granted review but deferred further action in the case pending consideration and disposition of a related issue in *In re Alatraste*, S214652, *In re Bonilla*, S214960, and *People v. Franklin*, S217699. (*People v. Hernandez*, review

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<sup>2</sup> Senate Bill No. 260 (2013-2014 Reg. Sess.) Statutes 2013, chapter 312 (hereafter, Senate Bill No. 260) added section 3051 to the Penal Code, which requires the Board of Parole Hearings to conduct youth offender parole hearings during the 15th, 20th, or 25th year of incarceration. (Pen. Code, § 3051, subd. (b).) A youthful offender whose sentence is a term of 25 years to life or greater is "eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions." (Pen. Code, § 3051, subd. (b)(3); Sen. Bill No. 260 (2013-2014 Reg. Sess.) § 4.) In conducting youth offender parole hearings under Penal Code section 3051, the Board of Parole Hearings is required to "give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law." (Pen. Code, § 4801, subd. (c).) If the youthful offender is found suitable for parole by the Board of Parole Hearings, he or she must be released even if the full determinate term originally imposed has not yet been completed. (Pen. Code, § 3046, subd. (c).)

granted Apr. 1, 2015, S224383.) In May 2016, the Supreme Court decided *People v. Franklin* (2016) 63 Cal.4th 261 and determined that “Penal Code sections 3051 and 4801 . . . moot [a] constitutional claim” like the one presented by defendant here. (*Franklin*, at p. 268.) In addition, however, because the defendant in *Franklin* “raise[d] colorable concerns as to whether he was given adequate opportunity at sentencing to make a record of mitigating evidence tied to his youth,” the Supreme Court remanded the case “so that the trial court [could] determine whether [the defendant] was afforded sufficient opportunity to make such a record at sentencing.” (*Id.* at p. 269.)

Following its decision in *Franklin*, the California Supreme Court transferred this case back to us with directions to vacate our decision and reconsider the cause in light of *Franklin*. Having now done so, we once again find no ineffective assistance in counsel’s failure to move to suppress defendant’s confession, and while we now conclude (following *Franklin*) that any constitutional challenge to defendant’s sentence was rendered moot by the Legislature’s enactment of Penal Code sections 3051 and 4801, like the Supreme Court in *Franklin* we remand the case to the trial court to determine whether defendant was afforded sufficient opportunity to make a record at sentencing of mitigating evidence tied to his youth.

#### FACTUAL AND PROCEDURAL BACKGROUND

Defendant’s arguments on appeal do not require a detailed recitation of the evidence or of the trial. Suffice it to say that on December 16, 2009, defendant participated in three different gang-related shootings. A week later, defendant was arrested and interrogated by Tracy Police Detective Matthew Sierra. During the interrogation, defendant admitted being involved in the shootings.

A jury found defendant guilty of two counts of attempted murder, one count of being an accessory to a felony, three counts of assault with a firearm, and one count of shooting at an inhabited dwelling. The jury also found true a number of firearm and gang enhancement allegations.

The trial court sentenced defendant to an effective term of 68 years to life in prison, constituted as follows: a term of 15 years to life for shooting at an inhabited dwelling; a consecutive life term for one of the attempted murders (which requires service of no less than seven years in prison before parole (Pen. Code, § 3046, subd. (a))); a consecutive term of 25 years to life for the firearm enhancement on that attempted murder; a consecutive term of three years and four months for one of the assaults; a consecutive term of 15 years to life for the other attempted murder; and a consecutive term of two years and eight months for one of the other assaults.<sup>3</sup> The court granted defendant 451 days of presentence credits. Defendant timely appealed.

## DISCUSSION

### I

#### *Defendant's Trial Attorney Was Not Ineffective In Failing To Move To Suppress Defendant's Confession*

Defendant contends his confession to police was involuntary, but he acknowledges that he cannot raise this issue directly on appeal because his trial attorney did not move to suppress his confession. Accordingly, he contends his trial attorney was constitutionally ineffective for not making such a motion. To prevail on this argument, defendant must show that the motion to suppress he contends his trial attorney should have made would have had merit. (See *People v. Wharton* (1991) 53 Cal.3d 522, 576.) Defendant has not made this showing.

“As a prophylactic safeguard to protect a suspect’s Fifth Amendment privilege against self-incrimination, the United States Supreme Court, in *Miranda*,<sup>[4]</sup> required law enforcement agencies to advise a suspect, before any custodial law enforcement

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<sup>3</sup> The court stayed the sentences for being an accessory to a felony and for the third assault pursuant to Penal Code section 654.

<sup>4</sup> *Miranda v. Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694].

questioning, that ‘he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.’ ” (*People v. Martinez* (2010) 47 Cal.4th 911, 947, quoting *Miranda v. Arizona, supra*, 384 U.S. at p. 479 [16 L.Ed.2d at p. 726].) “ ‘Critically, however, a suspect can waive these rights.’ [Citation.] To establish a valid waiver of *Miranda* rights, the prosecution must show by a preponderance of the evidence that the waiver was knowing, intelligent, and voluntary.” (*People v. Nelson* (2012) 53 Cal.4th 367, 374-375.)

While the foregoing constitutional protections apply to minors, the United States Supreme Court has “ ‘emphasized that admissions and confessions of juveniles require special caution’ [citation] and that courts must use ‘special care in scrutinizing the record’ to determine whether a minor’s custodial confession is voluntary.” (*People v. Lessie* (2010) 47 Cal.4th 1152, 1166-1167.) In making this determination, “we inquire ‘into the totality of the circumstances surrounding the interrogation, to ascertain whether the accused in fact knowingly and voluntarily decided to forgo his rights to remain silent and to have the assistance of counsel.’ Because defendant is a minor, the required inquiry ‘includes evaluation of the juvenile’s age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.’ ” (*Lessie*, at p. 1169.)

In arguing that his confession was involuntary, defendant tries to analogize his case to a case from the Ninth Circuit -- *Doody v. Ryan* (9th Cir. 2011) 649 F.3d 986 (*Doody*) -- in which a majority of that court concluded that a minor’s confession was involuntary.<sup>5</sup> As will be seen, the situation in *Doody* is easily distinguishable from the

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<sup>5</sup> In defendant’s opening brief, filed in August 2011, defendant’s appointed appellate attorney actually discussed an earlier opinion in the *Doody* case -- *Doody v.*

situation in this case, and the Ninth Circuit’s decision in that case does not compel the same result here.

In *Doody*, the Ninth Circuit majority concluded that a confession by a 17-year-old high school student should have been excluded because “the relentless, nearly thirteen-hour interrogation of a sleep-deprived juvenile by a tag team of detectives” rendered his confession involuntary. (*Doody, supra*, 649 F.3d at pp. 990, 1023.) In reaching this conclusion, the Ninth Circuit majority relied on a number of facts. First, the police interrogation of the defendant “began at 9:25 p.m. and concluded at 10:00 a.m. the next day.” (*Id.* at p. 991.) The majority characterized this as “an extraordinarily lengthy interrogation of a sleep-deprived and unresponsive juvenile.” (*Id.* at p. 1009.)

Second, the police detective’s “recitation of *Miranda*’s basic warnings consume[d] twelve pages of transcript, largely a byproduct of the detective’s continuous usage of qualifying language.” (*Doody, supra*, 649 F.3d at p. 991.) This “twelve-page exposition . . . negated the intended effect of the *Miranda* warning[s]” because the detective “downplayed the warnings’ significance, deviated from an accurate reading of the *Miranda* waiver form, and expressly misinformed Doody regarding his right to counsel” by implying “that Doody only had the right to counsel if he were involved in a crime.” (*Doody*, at pp. 991, 1003.)

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*Schriro* (9th Cir. 2010) 596 F.3d 620 -- that had been vacated almost a year earlier, in October 2010, when the United States Supreme Court granted certiorari, vacated the judgment, and remanded the case to the Ninth Circuit for further consideration. (*Ryan v. Doody* (2010) 562 U.S. 956 [178 L.Ed.2d 282].) The *Doody* opinion that we discuss herein was filed in May 2011, following the Ninth Circuit’s further consideration of the case in response to the Supreme Court’s directions. (*Doody, supra*, 649 F.3d at p. 990.) As defendant’s appellate attorney points out in the reply brief, the Ninth Circuit’s opinion following further consideration applies the same analysis as did the court’s original opinion and “essentially duplicate[s] the language of the original opinion.” Nonetheless, we are mystified as to why defendant’s attorney was unable to find and discuss the citable opinion that was filed three months before he filed the opening brief instead of discussing a superseded opinion that was vacated almost a year earlier.

Third, “the detectives’ relentless and uninterrupted interrogation of an unresponsive juvenile was far from ‘courteous.’ Instead, the detectives continuously demanded, over and over without a response from Doody, answers to their questions. . . . Although the detectives sometimes couched their questions in ‘pleading’ language, their tones were far from pleasant, varying from ‘pleading’ to scolding to sarcastic to demeaning to demanding. Regardless of tone, over twelve hours of insistent questioning of a juvenile by tag teams of two, three and four detectives became menacing and coercive rather than ‘courteous.’ Tellingly, some of the detectives’ statements, particularly those immediately preceding the confession, informed Doody that he *had* to answer their questions. . . . Indeed, at times the tones of the detectives [we]re downright chilling.” (*Doody, supra*, 649 F.3d at p. 1013.)

Fourth, “[t]he intensive and lengthy questioning was compounded by Doody’s lack of prior involvement in the criminal justice system, his lack of familiarity with the concept of *Miranda* warnings, and the staging of his questioning in a straight-back chair, without even a table to lean on.” (*Doody, supra*, 649 F.3d at p. 1009.)

Fifth, “this same task force questioned four adult men and, undoubtedly using the same tactics, procured what the State concedes were false confessions from all four.” (*Doody, supra*, 649 F.3d at p. 1013.)

Sixth, “[b]y the end of the interrogation, Doody was sobbing almost hysterically.” (*Doody, supra*, 649 F.3d at p. 1014.)

Defendant contends that “[t]he factual basis for an involuntary finding in *Doody* are matched by the circumstances of the instant case.” We disagree.

A

#### *Use Of The Bathroom*

First, contrary to defendant’s argument, we find nothing comparable between the nearly 13-hour interrogation in *Doody*, which lasted through the night and into the following morning, and the interrogation here, which lasted about two hours. Defendant

insists that even though the interrogation did not last nearly as long as in *Doody*, “[t]he stress of interrogation pressure” here was like that in *Doody* because Detective Sierra was “determin[ed] to force [him] to talk without a bathroom break, in spite of [his] statement at the outset that he needed to urinate.” In other words, defendant suggests his will was overcome at least in part because he needed to urinate and Detective Sierra would not let him do so.

The record does not support defendant’s argument in this regard. A review of the video recording of the interrogation establishes that defendant never showed any distress over not being allowed to use the bathroom. At the outset of the interrogation, Detective Sierra offered defendant more water, which defendant refused, saying first that “[i]f I drink more, man, I’m gonna have to pee,” and then, “I’m already wanting to.” After that, though, defendant did not press the point, and 40 transcript pages into the interview, he accepted the detective’s offer of more water without saying anything about needing to use the bathroom. Shortly after that, defendant began to tell Detective Sierra about his involvement in the crimes. Again, however, he gave no indication that he was feeling pressured to talk because he needed to use the bathroom. Some 25 pages later, defendant refused the detective’s offer of more water or a soda and said that he “just need[ed] to pee.” By that time, however, defendant had already made most of his confession. Moreover, defendant still did not show any sign that he was talking to Detective Sierra because of his need to urinate. The detective showed defendant some photographs, and defendant identified various individuals in those photos. When the detective eventually told defendant he would let defendant go to the bathroom “in a second,” defendant did not say anything about his need to go; instead, he told the detective, “Hey. Don’t say, don’t say nothing though,” which Detective Sierra understood to be a request that he not tell any other gang member about what defendant was telling him. Later, defendant again declined the detective’s offer of more water or a soda and said again that he “just need[ed] to pee.” At that point, Detective Sierra left the interview room, and another

detective came in shortly thereafter and took defendant to the bathroom before the interrogation continued.<sup>6</sup>

Based on the foregoing, we find nothing to suggest that defendant's will was affected even in the slightest by his need to use the bathroom during the interrogation.

## B

### *Adequacy Of The Miranda Warnings*

Defendant next contends that the *Miranda* warnings he received were comparable to the faulty *Miranda* warnings that Doody received. Not so. As we have noted, in *Doody* the detective's *Miranda* warnings stretched over 12 pages of transcript due to his "continuous usage of qualifying language" which had the effect of "negat[ing] the intended effect of the . . . warning[s]" because the detective "downplayed the warnings' significance, deviated from an accurate reading of the *Miranda* waiver form, and expressly misinformed Doody regarding his right to counsel" by implying "that Doody only had the right to counsel if he were involved in a crime."<sup>7</sup> (*Doody, supra*, 649 F.3d at p. pp. 991, 1003.) Here, in contrast, Detective Sierra accurately stated the *Miranda* warnings in five lines of transcript. Nevertheless, defendant complains because the

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<sup>6</sup> In constructing his argument on this point in defendant's opening brief, it appears that defendant's appellate counsel did not view the video recording of defendant's interrogation but instead tried to determine what had happened from the transcript alone. As a result, appellate counsel reached the erroneous conclusion that defendant "did not get his trip to the bathroom."

<sup>7</sup> Specifically, the detective told Doody, " 'Okay, and the next one states that you have the right to have an attorney present prior to and during questioning, and what that means [*sic*] that if you want one, you're allowed to have a lawyer here before and during you know my questions to you, okay. And then an attorney is a lawyer who will speak for you and help you concerning the crime or any kind of offense that ah we might think that you or somebody else is involved in, if you were involved in it, okay. Again, it [*sic*] not necessarily mean that you are involved, but if you were, then that's what that would apply to okay.' " (*Doody, supra*, 649 F.3d at p. 992.)

detective prefaced his simple statement of the *Miranda* warnings by telling defendant that he was “not under arrest or anything like that.” According to defendant, by doing so, Detective Sierra “suggested [the warnings were] a mere formality that did not actually apply to [defendant] since he was not under arrest” and thus “implied [defendant] had no need for counsel.” Defendant also contends that the detective’s treatment of the warnings as a mere formality was accentuated by the fact that “interrogation began promptly after the warning[s] without asking if [defendant] wanted to waive his constitutional rights.”

We find no support for defendant’s argument that the form and context of the *Miranda* warnings he received supports his assertion that his confession was involuntary. In our view, there was nothing about Detective Sierra’s prefatory statement that defendant was not under arrest that minimized or discounted the significance of the *Miranda* warnings that followed. Moreover, the warnings themselves were plainly and simply stated, and defendant expressly acknowledged that he understood them and that he had “heard [them] before.” In fact, he asserted he had heard them “[l]ots of times,” and he admitted that he had been arrested once before when he was “like, thirteen.”<sup>8</sup> Thus, this case is nothing at all like *Doody*, where the *Miranda* warnings were “transform[ed] . . . into a twelve-page rambling commentary that [wa]s in alternating part misleading and unintelligible” and where the defendant “expressly [told] the detective that he had never heard of *Miranda* warnings.” (*Doody, supra*, 649 F.3d at pp. 1004, 1007.)

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<sup>8</sup> Even though defendant acknowledged only one prior arrest, it is possible he could have been given the *Miranda* warnings during other encounters with police that did not result in his arrest. He also could have been exposed to the warnings by various other means, for example, through film or television.

## C

### *Lies And Deception*

Defendant next tries to analogize this case to *Doody* by arguing that the interrogating detectives in each case used lies and deception. In particular, defendant complains that the detective interrogating him “concocted a bald-faced lie that if [defendant] confided in him no one else would ever know.” In making this argument, however, while defendant accurately recounts what Detective Sierra said, he underplays the significance of all of the detective’s words, as well as the context in which they were spoken. He also fails to acknowledge the import of his own words, which plainly suggest that Detective Sierra’s statements did not actually mislead him into making a confession.

At one point in the interview, defendant expressed concern that if he talked to Detective Sierra about what happened, and if the detective then told other gang members about what defendant said (“if you go out talking shit, like, oh, this fool told me this and that”), “they” -- meaning the other gang members -- “could . . . kill” him. The detective assured defendant that he was not “talking to any other homeboys or anything like that.” Later, Detective Sierra told defendant that being honest would help him out with a jury. This exchange then occurred:

“[Defendant]: If I talk, nobody’s gonna know?”

“Detective: It’s gonna be between us, bro. It’s between us right here.

“[Defendant]: Promise?”

“Detective: I promise. It’s with us right here. Okay? *I do have to write everything down, eventually*, because I gotta type, uh, for, like, ever. But just be honest, brother.” (Italics added.)

At that point, defendant began answering Detective Sierra’s questions. When the detective tried to cajole defendant into telling him “who shot,” the following exchange occurred:

“[Defendant]: Mm . . . Fuck, man . . . You know what can happen if I talk, if I go to jail? Prison? Do you know? And they know everything.

“Detective: They don’t know sh--they don’t know shit.

“[Defendant]: They do.

“Detective: You know what?

“[Defendant]: You’d be surprised all the things they know, man. Everybody [who] snitches, they get killed in prison, sooner or later. They know, they know somehow. They find out. That’s, that’s, that’s how bad those people are. And you say you’re not gonna say nothing. Someone’s gonna find out no matter what. What I just said right now, is gonna get me killed sooner or later. By my own people, man. I know you’re gonna tell someone else. Fuck it.

“Detective: Between us. It’s between us, bro. *I mean, it’s between us and it’s between the courts, bro.*” (Italics added.)

As Detective Sierra continued to emphasize the importance of telling the truth and continued to ask who shot, defendant focused on asking the detective what “they” -- presumably meaning the other gang members who were involved -- had told the detective. When Detective Sierra implied that “[e]verybody” had said defendant had shot, defendant responded, “They all told you though? That’s fucked up, man, you think you got friends, man.” At that point, defendant admitted shooting.

From the foregoing, it is apparent that defendant never actually believed that what he was telling Detective Sierra would *only* be between the detective and him. Defendant’s primary concern was that the detective would tell other gang members about defendant’s statements, and while Detective Sierra assured defendant he would not do so, he also made it clear to defendant that what defendant said *would* be made known to

other people -- in particular, the court and the jury.<sup>9</sup> This was consistent with the *Miranda* warning defendant received at the outset of the interrogation, “Anything you say may be used against you in a court of law.” We find nothing in the interrogation to support the argument that defendant was actually misled into believing that what he told the detective would never be made known to anyone else. Indeed, defendant himself seemed to be reconciled to the fact that his “own people” would find out what he said “no matter what,” and yet he still talked. Thus, nothing about the supposed “deception” used by the detective supports defendant’s argument that his confession was involuntary.

#### D

##### *Promises And Threats*

Defendant next tries to analogize this case to *Doody* by arguing that the interrogating detectives in each case used promises of benefit and threats of harm. Mostly, however, what defendant points to in this case are statements by the detective to the effect that it would go better for defendant in court if he was honest and told the truth about what happened. But “there is nothing improper in pointing out that a jury probably will be more favorably impressed by a confession and a show of remorse than by demonstrably false denials. ‘No constitutional principle forbids the suggestion by authorities that it is worse for a defendant to lie in light of overwhelming incriminating evidence.’ [Citation.] Absent improper threats or promises, law enforcement officers are permitted to urge that it would be better to tell the truth.” (*People v. Williams* (2010) 49 Cal.4th 405, 444.)

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<sup>9</sup> Indeed, defendant testified at trial that he was forthcoming with Detective Sierra during the interrogation because he believed the detective’s promise that “he wouldn’t tell *any other gang members*” what defendant told him. (Italics added.)

## E

### *Minimizing The Criminal Acts*

Finally, defendant tries to relate this case to *Doody* by arguing that in *Doody* the interrogating detectives demeaned Doody's accomplices while in this case the detective demeaned the rival gang members who were the victims of the shootings. According to defendant, in each case this tactic was used to "minimize" the criminal acts of which the defendant was accused.

How this supposed "minimization" of the criminal acts supports the conclusion that defendant's confession was involuntary is something defendant never makes clear. Certainly defendant does not point to anywhere in the *Doody* opinion where the Ninth Circuit majority relied on this aspect of the interrogation to support the conclusion that Doody's confession was involuntary. Without such analysis, defendant's reliance on this alleged similarity between the two cases (which is stretched, at best) does nothing to show that his confession was anything other than knowing, intelligent, and voluntary.

## F

### *Conclusion*

Weighing the totality of the circumstances surrounding defendant's confession, defendant has not persuaded us that a motion to suppress his confession as involuntary would have had any chance of success. Accordingly, his claim of ineffective assistance of counsel based on his trial attorney's failure to make such a motion is without merit.

## II

### *Defendant's Constitutional Challenge To His Sentence Is Moot But Remand Is Still Necessary*

In his opening brief, defendant contended his sentence constituted cruel and unusual punishment under the Eighth Amendment and his trial attorney was ineffective

for failing to object to the sentence on that ground.<sup>10</sup> Following the initial briefing in the case, both the United States Supreme Court and the California Supreme Court released opinions addressing the constitutionality of lengthy prison terms imposed on defendants for crimes committed as minors. (*Miller v. Alabama* (2012) \_\_\_ U.S. \_\_\_ [183 L.Ed.2d 407] (*Miller*); *People v. Caballero* (2012) 55 Cal.4th 262 (*Caballero*)). The parties filed supplemental briefs addressing those decisions, and in December 2012 the People conceded that “remand would be appropriate to resentence [defendant] so as to permit a meaningful opportunity for release from prison within his expected lifetime.”

Following the passage of Senate Bill No. 260, we requested supplemental briefing on whether that legislation rendered defendant’s challenge to his sentence moot. The People contended it did; defendant disagreed. As we have explained, a majority of this panel originally agreed with defendant and concluded that his sentence was unconstitutional and had to be reversed and the case remanded for reconsideration. Our Supreme Court granted review, held the case, then transferred it back to us for reconsideration in light of *Franklin*.

In *Franklin*, the Supreme Court determined that “Penal Code sections 3051 and 4801 . . . moot [a] constitutional claim” like the one presented by defendant here because “those statutes provide [defendant] with the possibility of release after 25 years of imprisonment [citation] and require the Board of Parole Hearings (Board) to ‘give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity.’” (*People v. Franklin, supra*, 63 Cal.4th at p. 268.) In his brief on remand, defendant contends *Franklin* was wrongly decided, but he concedes we are bound to follow it. Accordingly,

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<sup>10</sup> Although defendant framed the issue in terms of his trial attorney’s ineffective assistance of counsel, we elected to reach the issue as a new development in the law since defendant’s sentencing.

as we must, we conclude that defendant's constitutional challenge to his sentence has been rendered moot by the enactment of Penal Code sections 3051 and 4801.

Defendant nonetheless contends he is "is entitled to the same limited remand afforded the defendant in *Franklin*" because "[t]he juvenile factors highlighted in the statute and in the high courts' decisions were not relevant to sentencing proceedings at the time and were not considered." For their part, the People do "not oppose a limited remand in this case like the one ordered in *Franklin*" because "the sentencing hearing took place prior to *Miller* and the passage of SB 260" and "[i]t does not appear from the record that the sentencing court conducted a full analysis of youth-related factors as contemplated by *Miller* or SB 260, likely because the full legal relevance of that information was not yet established."

In *Franklin*, because "[i]t [wa]s not clear whether Franklin had sufficient opportunity to put on the record the kinds of information that [Penal Code] sections 3051 and 4801 deem relevant at a youth offender parole hearing," the Supreme Court "remand[ed] the matter to the trial court for a determination of whether Franklin was afforded sufficient opportunity to make a record of information relevant to his eventual youth offender parole hearing." (*People v. Franklin, supra*, 63 Cal.4th at p. 284.) The court continued as follows: "If the trial court determines that Franklin did not have sufficient opportunity, then the court may receive submissions and, if appropriate, testimony pursuant to procedures set forth in [Penal Code] section 1204 and rule 4.437 of the California Rules of Court, and subject to the rules of evidence. Franklin may place on the record any documents, evaluations, or testimony (subject to cross-examination) that may be relevant at his eventual youth offender parole hearing, and the prosecution likewise may put on the record any evidence that demonstrates the juvenile offender's culpability or cognitive maturity, or otherwise bears on the influence of youth-related factors. The goal of any such proceeding is to provide an opportunity for the parties to make an accurate record of the juvenile offender's characteristics and circumstances at

