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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re ADRIAN ALEX GONZALEZ

on Habeas Corpus.

E060770

(Super.Ct.No. RIC1306030)

OPINION

APPEAL from the Superior Court of Riverside County. Helios (Joe) Hernandez, Judge. Reversed and remanded with directions.

Paul E. Zellerbach, District Attorney, and Matt Reilly, Deputy District Attorney, for Plaintiff and Appellant.

Leonard J. Klaif, under appointment by the Court of Appeal, for Defendant and Respondent.

This matter returns to us on transfer from the California Supreme Court after a grant and hold on the issue of whether defendant Adrian Alex Gonzalez's sentence of 81years 4 months plus four consecutive life terms constituted cruel and unusual punishment because it was the functional equivalent of a sentence of life without possibility of parole (LWOP). In *People v Franklin* (2016) 63 Cal.4th 261 (*Franklin*), the

California Supreme Court held that the enactment of Penal Code section 3051,¹ which provides for a youth offender parole hearing to be held no later than 25 years into a youth's sentence, rendered moot a claim that an effective LWOP sentence constituted cruel and unusual punishment. It also held that a defendant is afforded an opportunity to make a record of information relevant to his eventual youth offender parole hearing at the time of sentencing.

Here, the California Supreme Court has ordered that an order to show cause returnable in the Riverside County Superior Court be issued to the Secretary of the Department of Corrections and Rehabilitation. The Secretary of the Department of Corrections and Rehabilitation is to be ordered by the superior court to show cause, when the matter is placed on calendar, why defendant is not entitled to make a record "of mitigating evidence tied to his youth" in accordance with the holding in *Franklin*.

FACTUAL AND PROCEDURAL BACKGROUND

A detailed recitation of the procedural history of this case can be found in our prior opinion and need not be repeated here.

Defendant was convicted of six counts of attempted premeditated, willful, and deliberate murder (§§ 664/187), six counts of assault with a firearm (§ 245, subd. (a)(2)), one count of firing at an inhabited building (§ 246), one count of participation in a criminal street gang (§ 186.22, subd. (a)), a finding he committed the crimes for the benefit of or at the direction of a criminal street gang (§ 186.22, subd. (b)), and a finding

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

he personally and intentionally discharged a firearm (§12022.53). He was sentenced to a determinate term of 81 years 4 months. In addition, he was sentenced to four consecutive life terms for the attempted murder convictions.

On May 16, 2013, defendant filed a petition for writ of habeas corpus (petition) alleging he was 16 years old at the time of his offenses. He contended his sentence constituted a de facto LWOP sentence in violation of the Eighth Amendment. On June 27, 2013, the superior court found that the petition stated a prima facie case for relief and ordered the People to show cause why the petition should not be granted. The People filed a response that under section 3051, defendant would be eligible for parole when he was 41 years old. He no longer had a de facto LWOP sentence. The superior court granted the petition based “on the fact that he was 16 at the time of the crime.”

In our previous opinion, we reversed the trial court’s grant of the petition on the People’s appeal finding his sentence was not a de facto LWOP sentence. We concluded that since the California Legislature enacted section 3051, which entitles defendant to a youth offender parole hearing after he has served no more than 25 years, he was not subject to an impermissible LWOP sentence.

The California Supreme Court granted review. It stated, “Further action is deferred pending consideration and disposition of related issues in *In re Alariste*, S214652, *In re Bonilla*, S214960, and *People v. Franklin*, S217699 (see Cal. Rules of Court, rule 8.512(d)(2)), or pending further order of the court.”

On May 26, 2016, the California Supreme Court issued its opinion in *Franklin* which involves the same issues as in this case. It held that section 3051 effectively reformed the defendant’s statutorily mandated sentence so that he would become eligible for parole, “at a hearing that must give great weight to youth-related mitigating factors, during his 25th year of incarceration. By operation of law, Franklin’s sentence is not functionally equivalent to life without parole. . . .” (*Franklin, supra*, 63 Cal.4th at pp. 268-269, 283-284, 286.) It also held that remand was required for a determination of whether the defendant was afforded sufficient opportunity to make a record of information relevant to his eventual youth offender parole hearing at the time of sentencing since section 3051 was enacted after he was sentenced. (*Franklin*, at pp. 286-287.)

Similarly here, defendant’s claim that his sentence was the equivalent of an LWOP sentence is moot but the California Supreme Court has ordered remand in order for him to make a record of information relevant to his eventual youth offender parole hearing.

DISPOSITION

The grant of the petition and order for resentencing is reversed. The matter is remanded to the Riverside County Superior Court. That court is to issue an order to show cause to the Secretary of the Department of Corrections and Rehabilitation that it shall serve and file with the superior court on or before September 16, 2016, a return to the petition (Cal. Rules of Court, rule 8.385(e)) addressing why petitioner is not entitled to make a record of “mitigating evidence tied to his youth” in accordance with *Franklin*.

(*Franklin*, supra, 63 Cal.4th at pp. 268-269, 283-284.) Defendant may serve and file a traverse with the superior court on or before 15 days after the return is filed. The superior court shall notify counsel of record a minimum of 20 days in advance of the hearing. Pursuant to the direction of the California Supreme Court, the clerk of this court is directed to issue the remittitur forthwith.

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McKINSTER
J.

We concur:

RAMIREZ
P. J.

MILLER
J.