

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

LEONEL CONTRERAS and WILLIAM STEVEN RODRIGUEZ,

Defendants and Appellants.

Case No. S224564

**SUPREME COURT
FILED**

JUL 14 2017

Jorge Navarrete Clerk

Deputy

San Diego County Superior Court, Case No. SCD236438
Court of Appeal, Fourth Appellate District, Division One, No. D063428
The Honorable Peter C. Deddeh, Judge

RESPONDENT'S SUPPLEMENTAL BRIEF

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After briefing in this case was complete, the United States Supreme Court issued its decision in *Virginia v. LeBlanc* (2017) 582 U.S. ___ [2017 WL 2507375] (*LeBlanc*). There, the high court overturned the Fourth Circuit's decision in *LeBlanc v. Mathena* (4th Cir. 2016) 841 F.3d 256, a decision that appellant Contreras relies on at length in arguing that geriatric release programs do not provide a meaningful opportunity to obtain release. (Contreras BOM 29-31.) The Supreme Court held that a Virginia state court decision upholding a life sentence for a 16-year-old who committed rape was neither contrary to nor an unreasonable application of the "meaningful opportunity" for release standard of *Graham v. Florida* (2010) 560 U.S. 48 because the defendant was eligible for geriatric release beginning at age 60. (*LeBlanc, supra*, 2017 WL 2507375 **3-4.) Because California's geriatric release program is substantially similar to the program in Virginia, it follows it would not be unreasonable for this Court to conclude that appellants likewise have a meaningful opportunity for release. At a minimum, the *LeBlanc* holding casts doubt on appellants' assertion that the Eighth Amendment requires a parole hearing after a juvenile defendant has served no more than 25 years in prison.

Under the Virginia geriatric release program at issue in *LeBlanc*, defendants who serve a certain minimum number of years in prison (either 5 or 10) and who reach a specified age (either 60 or 65) are entitled to be considered for parole based on the normal parole consideration process. The Virginia Supreme Court had held that this program satisfies *Graham* because it provides a meaningful opportunity to obtain release. (*Angel v. Commonwealth* (2011) 281 Va. 248, 275.) In the case of *LeBlanc*, however, the Fourth Circuit Court of Appeals concluded such a rule was objectively unreasonable, granted a petition for writ of habeas corpus and overturned his sentence. The Commonwealth of Virginia petitioned for

certiorari, and the high court granted the writ. (*LeBlanc, supra*, 2017 WL 2507375 * 2-3.)

The Supreme Court determined that the Fourth Circuit erred by failing to grant the state court decision the deference required under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. section 2254(d)(1). The state court decision, determined the high court, was not objectively unreasonable in concluding that the geriatric release program satisfied *Graham* by relying on normal parole factors, which would allow the parole board to decide whether the defendant had demonstrated maturity and rehabilitation. (*LeBlanc, supra*, 2017 WL 2507375 *3.)

To be sure, the holding of *LeBlanc* is limited by its procedural context. The Supreme Court expressed no view on the underlying Eighth Amendment claim, noting that reasonable arguments could be made on both sides. (*LeBlanc, supra*, 2017 WL 2507375 *4.) Nevertheless, the decision is useful because it held that it is not objectively unreasonable to conclude that *Graham* could be satisfied where (i) the defendant is eligible for parole consideration for parole at age 60 and (ii) such eligibility is based on normal parole considerations. The *LeBlanc* decision demonstrates, contrary to appellant Contreras's assertions, that it is not "abundantly clear" that "any similar program in California also would not pass constitutional muster." (Contreras BOM 31.)

California's program for geriatric release is substantially similar to Virginia's. As with Virginia's program, both appellants here would be eligible for parole consideration at age 60. (Resp.'s Mot. for Jud. Not. Exh. 2.) In California, the Parole Board is authorized to consider "all other relevant information" when determining the appropriateness of geriatric release. (*Ibid.*) This relevant information would naturally include consideration of the defendant's demonstrated maturity and rehabilitation.

But even outside the context of a geriatric release, the *LeBlanc* decision remains useful because it demonstrates that it is not objectively unreasonable to conclude that consideration for parole beginning at age 60 satisfies *Graham*. This conclusion runs directly contrary to appellants' suggestion that it is cruel and unusual to impose a term of more than 25 years in prison before having a first opportunity to demonstrate maturity and rehabilitation for parole. (Contreras BOM 32; Rodriguez BOM 20-21.)

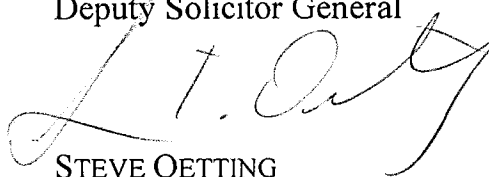
CONCLUSION

Accordingly, for the reasons here and in the prior briefs, respondent urges this court to reverse the decision of the Court of Appeal and affirm the trial court's sentence.

Dated: July 12, 2017

Respectfully submitted,

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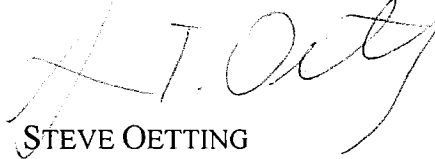
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CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S SUPPLEMENTAL BRIEF uses a 13 point Times New Roman font and contains 705 words.

Dated: July 12, 2017

XAVIER BECERRA
Attorney General of California

A handwritten signature in black ink, appearing to read "S. Oetting", is written over the printed name of Steve Oetting.

STEVE OETTING
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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Leonel Contreras, et al & William Rodriguez, et al.** No.:S224564

I declare: I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On July 13, 2017, I served the attached **RESPONDENT'S SUPPLEMENTAL BRIEF** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows, and/or electronically via TrueFiling, as specified:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 13, 2017, at San Diego, California.

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