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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. ANTOLIN GARCIA-TORRES, Defendant.	Criminal Case No. 213515 DATE: September 14, 2017 DEPT: 40 PEOPLE'S RESPONSE AND OPPOSITION TO DEFENDANT'S MOTION TO PRECLUDE MANDATORY LIFE WITHOUT PAROLE

Defendant's motion is the latest installment in the incremental attack on sentences for murderers. Despite the absence of any proof a national consensus toward the elimination of the death penalty for special circumstance murderers just shy of their twenty-first birthday, the defendant goes even further by arguing that mandatory life without parole is now constitutionally suspect. Defendant further argues that mandatory LWOP for all persons age twenty-one or younger violates the California Constitution as well but does not cite the legal standard for the California Constitution on this point, indeed he cites to no case specifically exploring Art. I, section 17.

As part of his challenge to Penal Code section 190.2(a), defendant argues this Court is not empowered to consider the defendant's age or any other of the *Miller v. Alabama* (2012) 567 U.S. 460, factors. This is false, except to the extent that because the defendant has deliberately chosen

to avoid presenting his case as an applied challenge to his sentence, his proffered evidence becomes irrelevant.

Defendant presents his constitutional challenges as a facial challenge. This is wise given that this remorseless murderer – who was gainfully employed while in an adult relationship with the mother of his child, who was able to manage reasonable grades in his schooling, regularly take public transportation to work and eventually buy a car – planned and executed the kidnapping and murder of a vulnerable stranger, Sierra LaMar, and thereafter successfully suppressed significant evidence of his crimes by hiding her body. The fact is that in an as applied challenge, despite his age, the defendant is hardly the type of offender in which life without parole shocks the conscience. As a facial challenge, the defendant must demonstrate that in no circumstance is the application of mandatory LWOP constitutional. As there is no national consensus against the practice, indeed the norm is LWOP or death for special circumstances murder, it hardly follows that such a sentence would be cruel and unusual.

A. Cruel and Usual Punishment - 8th Amendment

Using chronological age for determining whether an individual is a juvenile or an adult is a touchstone of the criminal justice system. This defendant was two weeks shy of his 21st birthday at the time he kidnapped and murdered Sierra LaMar. He is not a juvenile as defined under section 190.5 of the Penal Code and therefore not eligible for its relief. The United States Supreme Court and the California Courts of Appeal have recognized this bright line with respect to its 8th Amendment analysis. Accordingly, excluding the defendant from consideration under section 190.5 is constitutional under the 8th Amendment, and the Court is mandated to sentence the defendant to life without the possibility of parole consecutive to a term of years that will be selected for his additional crimes against Ms. Lundy, Ms. Walters, and Ms. Orozco.

While the defendant here is no juvenile, it is true that in recent years, the Supreme Court has ruled that offenders under age 18 categorically receive the same punishments as adults who have committed the same crimes. *Roper v. Simmons* (2005) 543 U.S. 551, 578 (no death penalty); *Graham v. Florida* (2010) 560 U.S. 48, 82 (no LWOP for non-homicides); and *Miller, supra*, 567 U.S. at 471 (no mandatory LWOP for juvenile murderers). Yet, contrary to the defense's claim that

the aforementioned strand of 8th Amendment jurisprudence has evolved to include adult offenders, California courts have rejected similar claims. In *People v. Argeta* (2012) 210 Cal.App.4th 1478, the court stated as follows:

> [Defendant] was 18 and was convicted of first-degree murder as a principal. His counsel argue[d] that since the crime was committed only five months after [defendant's] 18th birthday the rationale applicable to the sentencing of juveniles should apply to him. We do not agree. These arguments regarding sentencing have been made in the past, and while '[d]rawing the line at 18 years of age is subject ... to the objections always raised against categorical rules ... [,it] is the point where society draws the line for many purposes between childhood and adulthood.' [Citations.] Making an exception for a defendant who committed a crime just [five] months past his 18th birthday opens the door for the next defendant who is only six months into adulthood. Such arguments would have no logical end, and so a line must be drawn at some point. We respect the line our society has drawn and which the United States Supreme Court has relied on for sentencing purposes, and conclude [defendant's] sentence is not cruel and/or unusual under *Graham*, *Miller,* or *Caballero*.

Id. at 1482. While counsel might try to suggest things have changed, last year in *People v. Perez* (2016) 3 Cal.App.5th 612, the Court of Appeal came to the same conclusion.

In *Perez*, the defendant who was 20 years old at the time of the offenses, relying on *Roper*, *Graham*, and *Miller*, argued that their rationales although not directly applicable to him, should "appl[y] equally to defendants of [his] age." *Id.* at 617. The court held that because *Perez* was not a juvenile at the time of the offenses, *Roper*, *Graham*, and *Miller* are not applicable. The court declined the "defendant's invitation to conclude new insights and societal understandings about the juvenile brain require us to conclude the bright line of 18 years old in the criminal sentencing context is unconstitutional." *Id. Perez* further rightly acknowledges that because both the U.S. Supreme Court and the California Supreme Court have concluded that 18 is the bright line rule that it was bound by their holdings. *Id.* This should be the end of the inquiry.

Federal courts of appeal have come to the same conclusion as well. See *United States v. Marshall* (6th Cir. 2013) 736 F.3d 492, 500 ("Marshall is at the very most an immature adult. An immature adult is not a juvenile.... Because Marshall is not a juvenile, he does not qualify for the Eighth Amendment protections accorded to juveniles."); *Melton v. Fla. Dep't of Corr.* (11th Cir. 2015) 778 F.3d 1234, 1235, 1237 ("*Roper* prohibits only the imposition of the death penalty on a

defendant who committed the capital crime when he was younger than 18 years old," whereas "Melton was 18 years, 25 days old when he committed the crime.")

The line of cases upon which *Miller* drew unambiguously apply solely to juveniles by drawing the line at 18 years of age in determining 8th Amendment limitations on sentencing. In *Roper*, the Court specifically held that "[t]he Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed." *Roper*, *supra*, 543 U.S. at 578. In justification of this bright line rule, the court explained:

> Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach.... [H]owever, a line must be drawn.... The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest.

Id. at 574.

In *Graham v. Florida*, the Supreme Court similarly set a bright line rule at 18, acknowledging that "[c]ategorical rules tend to be imperfect", and recognizing that "[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood." *Graham*, *supra*, 560 U.S. at 74-5 (quoting *Roper*, 543 U.S. at 574).

Further, the claim that the defendant could possibly possess some of the factors of youth, set forth in *Roper*, when he committed the crime is immaterial in his facial challenge. For instance, in *Melton*, *supra*, the defendant in a habeas challenge, despite being 18 years, and 25 days old when he committed the crime, argued "several of the factors considered in *Roper*—for instance, a lack of maturity and susceptibility to peer pressure—were present" in the case. *Melton, supra*, 778 F.3d at 1237. Nevertheless, the Court quoted *Roper*'s language that a "line must be drawn", and that the court was not required to consider the defendants "mental and emotional age" given that he was over 18 years old at the time of his crimes. *Id.*

Defendant sidesteps past this reality by suggesting new research shows that those under 18 are similar to older offenders. Even if this Court were empowered to ignore the holdings of the higher courts, the defendant provides not one shred of evidence that in the cruel and unusual

analysis that evolving standards of decency are moving away from the practice of mandatory LWOP for death-eligible murders, not even for 20 year olds. He provides not one bit of "objective indicia" that other states or the federal government are discouraging the practice or have barred it outright. See *Graham, supra*, 560 U.S. at 561. Controlling authority and a lack of objective indicia of a national consensus require that defendant's motion be denied.

As a result, the defendant's invitation to place in the record sworn testimony from Dr. Bigler should also be denied as not relevant to its sentencing discretion as none of it relates specifically to the defendant youth, character or his development.

B. Cruel or Usual Punishment - Art. I, sec. 17

The defendant challenges the mandatory nature of his sentence under the California Constitution as well. However, he cites to no cases addressing the legal standard for such a facial challenge and does not address whether such a challenge under California's cruel or unusual punishments clause is treated differently than its analogue in the Federal Constitution. That being said, a facial challenge is "the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the [law] would be valid." *People v. Rodriguez* (1988) 66 Cal.App.4th 157, 166. In essence, defendant's argument is that there is no offender anywhere where a mandatory LWOP sentence for a capital murder would be anything but so disproportionate to the crime that it shocks the conscience and offends fundamental notions of human dignity to impose it. Defendant cites no authority for the radical proposition that mandatory LWOP for death eligible murderers will always shock the conscience and offend fundamental notions of dignity. As that is the test under the California Constitution (*People v. Carmony* (2005) 127 Cal.App.4th 1066, 1085), the defendant's motion should be denied.

C. Equal Protection

California courts have stated that article IV, section 16(a), and other equal protection provisions in the California Constitution "have been generally thought in California to be substantially the equivalent of the equal protection clause of the Fourteenth Amendment to the United States Constitution." *Manduley v. Superior Court* (2002) 27 Cal.4th 537, 572. As a result, the People will address claim under both provisions in the same discussion.

A necessary prerequisite to an equal protection violation is that the legislative distinction must treat similarly situated persons differently. *Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253. This initial inquiry is not whether persons are similarly situated for all purposes, but "whether they are similarly situated for purposes of the law challenged." *Id.* (quoting *People v. Gibson* (1988) 204 Cal.App.3d 1425, 1436). The People are aware of no case that holds the distinction between minors and adults drawn in the criminal code produce similarly situated persons and the defense cites to none. Indeed, the authority is to the contrary. *People v. Watson* (2017) 8 Cal.App.5th 496, 518 (in a challenge to PC 1905.(b), 16 or 17 year-olds not similarly situated to persons under age 15); *People v. Haynes* (1984) 160 Cal.App.3d 1122. Regardless, the ban on mandatory juvenile LWOP for murderers is not just a creature of statute, but rather is constitutionally compelled. See *Miller*, *supra*. It would be novel for the defense to successfully claim an equal protection violation when the classification was mandated by the constitution, rather than the legislature. Defendant's equal protection motion must be denied on this basis alone.

Even if the classification drawn were of similarly situated persons, there would still not be an equal protection violation. Equal protection guarantees embodied in the Fourteenth Amendment of the United States Constitution and article I, section 7 of the California Constitution prohibit the state from *arbitrarily* discriminating among persons subject to its jurisdiction. *People v. Chavez* (2004) 116 Cal.App.4th 1, 4.

The Constitution gives states wide latitude in enacting laws which may affect some groups of citizens differently than others. *McGowan v. State of Maryland* (1961) 366 U.S. 420, 425. Equal protection is offended only if the classification rests on grounds "wholly irrelevant to the achievement of the State's objective." *Ibid.* There is a presumption that the legislature has acted within their constitutional powers, despite unequal results in practice. *Id.* at 425-426. Such laws "are not to be set aside if any state of facts reasonably may justify it." *Id.* at 426.

Where a disputed statutory disparity implicates no suspect class or fundamental right, an equal protection violation only exists where there is no rational relationship between the disparity of treatment and some legitimate governmental purpose. *Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 881. Age is not recognized as a suspect classification under either the United

States or California Constitutions. *Hicks v. Superior Court* (1995) 36 Cal.App.4th 1649, 1657. It is the U.S. Supreme Court that used the age of majority to differentiate between constitutional and unconstitutional punishments under the 8th Amendment in *Roper*, *Graham* and Miller . It would be illogical to the extreme to then argue that the constitutional requirement under the 8th Amendment creates an equal protection violation under the 14th.

Under the rational basis test, legislative choices are "not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data." *Walgreen Co. v. City and County of San Francisco* (2010) 185 Cal.App.4th 424, 436. Any conceivable purpose or policy may be considered. *Jensen v. Franchise Tax Bd.* (2009) 178 Cal.App.4th 426, 436. "[T]he state may recognize that different categories or classes of persons within a larger classification may pose varying degrees of risk of harm, and properly may limit a regulation to those classes of persons as to whom the need for regulation or statute is thought to be more crucial or imperative." *Kasler v. Lockyer* (2000) 23 Cal.4th 472, 482. "If a plausible basis exists for the disparity, courts may not second-guess its wisdom, fairness, or logic." *People v. Zamudio* (2017) 12 Cal.App.5th 8, 16 (quoting *Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 881.)

Here, both the State Legislature (and the courts) have made the rationale behind the statutory disparity clear. Individuals under the age of 18 who commit the most serious of crimes have not yet attained an age where the concept of punishment is the primary penal goal. Persons over age 18 have attained an age where punishment is the primary goal, either in the form of the death penalty or in the alternate, life without the possibility of parole. This is only one reasonable explanation, but as any rational basis is sufficient uphold the distinction, Penal Code section 190.5 is constitutional.

D. Conclusion

The People respectfully request that the defendant's motion be denied. The People further request that the Court deny an evidentiary hearing and strike the declaration of Dr. Erin Bigler as

hearsay.[1/] An evidentiary hearing would be superfluous in light of recent controlling authority on the matters challenged by the defendant.

DATED: September 7, 2017

Respectfully submitted,

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[1/] Rather than re-briefing the matter, the People ask this Court to incorporate its hearsay discussion and objection found in the People Response and Opposition to Defendant's Motion for New Trial.