

FILED

APR 21 2021

Clerk of the Court
Superior Court of California County of Santa Clara
BY _____ DEPUTY
T. Pierce

**SUPERIOR COURT OF CALIFORNIA
SANTA CLARA COUNTY
JUVENILE COURT DIVISION**

**DEFENSE COUNSEL ACCESS TO JUVENILE CASE FILE FOR
YOUTHFUL OFFENDER PAROLE ("YOP") HEARINGS**

(RIGHT TO INSPECT, COPY, AND USE WITHOUT SEPARATELY FILING AN §827 MOTION)

Background:

Certain inmates serving lengthy state prison commitments are eligible for a Youthful Offender Parole ("YOP") Hearing. Senate Bill 260 granted this right to inmates who committed their eligible offenses when they were under the age of 18. Effective 1/1/2016, Senate Bill 261 expanded these special hearings to prisoners who were under the age of 23 when they committed the offenses for which they currently are serving time. In October 2017, Assembly Bill 1308 extended the youthful offender parole eligibility to those under age 26. Penal Code §3051 allows people who were 16 or 17 years old at the time of a crime for which they were sentenced to life in prison without the possibility of parole ("LWOP") to be eligible for a YOP hearing in their 25th year of incarceration. It is estimated that more than 10,000 prisoners are eligible for YOP hearings. The law governing Youthful Offender Parole eligibility is set forth in Penal Code §3051 and §3051.1.

At a YOP hearing, the Parole Board must consider youthful factors because young people are considered less culpable than adults for their actions based on their lack of development, potential for rehabilitation and increased maturity over time.

In *People v. Franklin* (2016) 63 Cal. 4th 261, the court held that SB 260 ensures a meaningful opportunity for relief for youth offenders only if the information regarding the offender's characteristics and circumstances at the time of the offense will be available at the parole hearing. The right to have a mitigation packet prepared pursuant to *Franklin* is applicable to youthful offender eligible defendants with pending cases in Superior Court and to youthful offender parole eligible inmates currently incarcerated in the California

Department of Corrections (CDCR) for convictions arising out of Santa Clara County. Since 2014, reasonable professional standards require defense counsel representing youthful parole eligible clients to utilize experts, compile relevant records, conduct necessary investigation and prepare mitigation packets that document the client's diminished capacity and factors of youth for consideration at the YOP hearing.

Many YOP eligible defendants and inmates have a juvenile case file. The "juvenile case file" is defined in Rule 5.552 of the California Rules of Court to include: (1) all documents filed in a juvenile court case; (2) reports to the court by probation officers, social workers of child welfare services programs, and CASA volunteers; (3) documents made available to probation officers, social workers of child welfare services programs, and CASA volunteers in preparation of reports to the court; (4) documents relating to a child concerning whom a petition has been filed in juvenile court that are maintained in the office files of probation officers, social workers of child welfare services programs, and CASA volunteers; (5) transcripts, records, or reports relating to matters prepared or released by the court, probation department, or child welfare services program; and (6) documents, video or audio tapes, photographs, and exhibits admitted into evidence at juvenile court hearings.

Presently, defense counsel is required to file a petition pursuant to Welfare & Institutions Code §827 with the Presiding Judge of the Juvenile Justice Court and obtain court approval prior to using such records for mitigation purposes. The filing and processing of each petition for disclosure is time consuming and an undue encumbrance on the resources of the Court. Additionally, the filing and processing of each petition will likely result in lengthy delays, thereby affecting the ability of defense counsel to provide a thorough and timely mitigation hearing and/or packet.

Based upon these changes in the law, the Court makes the following order:

Therefore, defense counsel (or their designated representative) who represents a youthful offender eligible defendant or a youthful offender eligible inmate serving a sentence for a conviction out of Santa Clara County has the right to inspect, copy, and use documents and information from their client's "juvenile case file" to prepare a mitigation packet pursuant to *Franklin* for consideration at their youthful offender parole hearing without separately filing a petition for disclosure under WIC §827.

Defense counsel will redact the names, addresses, phone numbers, social security numbers, or any other identifying information of any victim(s) and siblings, and co-participants who were under the age of 18 at the time of the juvenile proceedings contained in any documents that counsel intends to include in the mitigation packet and that came from the "juvenile case

file.” This does not waive the confidentiality of any other participant to the events in question.

Defense counsel are permitted to share the redacted documents with experts who are participating in the preparation of the mitigation packet. Experts who use the documents shall return the documents to defense counsel in a timely manner.

Defense counsel shall destroy the documents after they are used for the Youthful Offender Parole Hearing.

Information obtained as a result of this order shall not be used for any other purpose. Except as otherwise provided herein, the documents shall not be published, disseminated, copied, or placed on the Internet.

SO ORDERED:



Judge Katherine Lucero
Presiding Judge of the Juvenile Court Division

Dated: 4/21/2021