

LAW WEEK

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State Supreme Court to Decide Fate of JLWOP Law

The 18th Judicial District contends the 2016 statute is unconstitutional, citing an obscure special legislation provision.

BY CHRIS OUTCALT
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For six years after the U.S. Supreme Court issued a trilogy of decisions banning life without parole for juvenile offenders, about 50 Colorado inmates who received that particular sentence prior to the court declaring it unconstitutional have had an uncertain fate. Now, for the second time since 2015, the question of how our state's legal system should process these cases is in the hands of the Colorado Supreme Court.

Last month, the state's highest court heard oral arguments in *People v. Brooks*, a case in which the 18th Judicial District Attorney's Office challenged the constitutionality of a 2016 law passed by the Colorado legislature. The 2016 law, Senate Bill 16-181, provided guidelines for how the courts should resentence each of these approximately 50 individuals in question, who are still serving the now-unconstitutional sentence of life without parole. (Between 1990 and 2006, juveniles convicted of first-degree murder in Colorado received a mandatory life sentence; after 2006, the sentence was changed to life with parole eligibility at 40 years.)

For the majority of these former juveniles, SB 181 simply offered the sentence currently on the books — 40 to life — as well as a chance for earned time. However, for about 16 of the offenders who were found guilty of felony murder — a provision in the statute that allows for a first-degree murder conviction even for so-called accomplices — SB 181 provided a second option: If during a resentencing hearing, a district court judge found “extraordinary mitigating circumstances,” the judge could decide to issue the individual a determinate sentence between 30 and 50 years.

This was the situation Curtis

Brooks found himself in earlier this year. Twice Brooks was hours away from the court proceeding with his resentencing hearing, and twice the Arapahoe County DAs office filed a last-minute challenge concerning the constitutionality of SB 181 — first at the district court level and then a Rule 21 challenge to the Supreme Court. In April, the court agreed to hear that challenge.

In 1995, Brooks, who was 15 at the time, had only lived in Denver for about a year. He was homeless. That spring, he met three other teens who all had darker tendencies and criminal records; the crew enlisted Brooks in a carjacking plot that eventually went fatally wrong. As part of the scheme, one of the three kids gave Brooks a gun and instructed him to fire a few warning shots in the air to distract the driver of the car they intended to steal. Unexpectedly, though, one of the other kids shot and killed the car's owner. At Brooks' trial, prosecutors told the court “this is properly a felony murder case.” A jury convicted Brooks, and, in accordance with the statute at the time, a judge sentenced him to life without parole.

One of Brooks' attorneys, Ashley Ratliff, had prepared to present to a judge what she felt would be extraordinary mitigation at her clients resentencing hearing early this year, arguing Brooks should be eligible for a new determinate sentence between 30 and 50 years. “Curtis Brooks is well past what he should have had to endure,” Ratliff said. “He didn't hurt or kill anyone.” Those arguments, however, will have to wait for a decision by the Supreme Court on the question of whether the new law is valid.

For its part, the district attorney's office says the law violates an old and obscure provision in the original 1876 state constitution that bars state politicians from passing what's called

“special legislation,” a clause meant to protect against favoritism. At oral arguments, Susan Trout, attorney for the 18th Judicial District, argued that the law's 30 to 50 provision for those convicted of felony murder amounted to special treatment for a particular class of 16 or 17 offenders. “Life with the possibility of parole at 40 is the appropriate sentence in the people's estimation,” Trout said.

Three older cases involving the constitution's special legislation clause were discussed at oral arguments. The first was a case from the 1960s in which Denver tried to pass a law that would have allowed the city to annex Glendale; the courts struck the law down, finding that it was targeted specifically at Glendale and thus constituted special legislation. The next was a case from the 1990s in which the legislature put together a package to try to lure United Airlines to Denver; the court found that although the law had clearly been focused on United it could apply to other airlines in the future and thus was not special. The third case, *People v. Canister*, was slightly more complicated.

At the time, in the early part of the last decade, Colorado had two people on death row whose fate were to be decided by a three-judge panel. Then, the U.S. Supreme Court ruled a defendant has a right to have a jury make that determination. The legislature attempted to pass a law that would allow a jury to determine whether to sentence these two individuals to death. The courts stepped in and struck down the provision as special because it applied only to these two people and had no possibility of impacting anyone else in the future. Instead, their sentences defaulted to life without parole. Addressing this question in its brief, the defense wrote: “Prosecutors and some lawmakers may have been unhappy with losing the death penalty option in

those two identified cases — hence, the hurried special legislation invalidated in *Canister* — but no lawmaking was required to remedy the constitutional wrong.”

The difference with this class of 50, said Sean Connelly, who argued on behalf of Brooks before the Supreme Court, is that there's nothing else on the books — the now-unconstitutional sentence of life without parole was the only option available. The sentence had been mandatory from 1990 to 2006 because there was nothing else to choose from. The legislature acted out of necessity in 2016, Connelly argued. “This attack is creating multiple gaps in the law that they're asking the courts to fill,” he said.

The justices asked several questions of both Trout and Connelly but seemed to spend more time probing Trout's line of thinking. At one point, Justice Richard Gabriel said, “I'm sorry, but I'm having trouble understanding your argument.” Shortly after that, Chief Justice Nancy Rice said, “It feels to me like you are really straining very hard semantically and otherwise to reach your position.”

Justice Rice followed her comment by asking Trout what she would have had the legislature do differently. “I think there were numerous possible general statutes that would have answered this problem,” she said. Trout suggested a few options, which included giving all of the approximately 50 members of this group the same sentence or having applied the 30- to 50-year provision to all others who meet the same criteria going forward. Anything other than, Trout said, rewarding 16 favored people.

An opinion in the case could be issued as early as this fall. Meanwhile, Brooks, and the rest of the felony murder defendants from this time period, will have to continue to wait for a resolution. •

— Chris Outcalt, COutcalt@circuitmedia.com