

FRANKLIN ATTACHMENT:

**ANSWERS TO QUESTION 6, GROUNDS FOR RELIEF
(JUDICIAL COUNCIL FORM MC-275)**

QUESTION 6: To answer Question 6, write "Please see attached" in the space for that question on the MC-275 form if it is not already printed there.

FILL OUT THE ATTACHMENT: Fill in the blanks that apply to you in section (a), **Supporting Facts**, of this Attachment.

SIGN, DATE, ATTACH: When you are done with the Attachment, sign and date it on last page. Attach all pages to your MC-275 form.

IMPORTANT: Read everything very carefully, both the parts already printed and the information you add. Make sure it is all correct and applies to your case. Cross out or change anything that is not accurate. This Attachment is filed under penalty of perjury.

Question 6: GROUNDS FOR RELIEF

Ground 1: Petitioner alleges that he is currently serving a sentence that entitles him to a youth offender parole hearing pursuant to Penal Code section 3051. Petitioner alleges that he had insufficient opportunity at his sentencing hearing to make a record of mitigating evidence to support a future application for parole. Petitioner contends he is therefore entitled to a baseline evidentiary hearing to preserve such evidence now.

(People v. Franklin (2016) 63 Cal.4th 281, 284 (Franklin).) Habeas corpus is the proper vehicle to seek a baseline hearing in cases where the time for direct appeal has passed.

(See Order dated June 29, 2016, In re Reyes (S233936).)

(a) Supporting facts:

(i) Eligibility and entitlement to a youth offender parole hearing.

The offense(s) for which I was convicted and the sentence I am serving are shown above in question 3 of my MC-275 form. *(Check one of the following):*

- I am serving a sentence for a specific length of time (determinate sentence): _____ years, and _____ months. I am informed and believe based on my estimated release date, including consideration of expected conduct credit, that my sentence will result in more than 15 total years of incarceration.
(Attach copy of California Department of Corrections and Rehabilitation notice showing your expected release date and earliest possible release date, if available.)
- I am serving a life-top sentence (indeterminate sentence) with the possibility of parole.

The longest term the court imposed for any offense or enhancement is _____ *(insert longest term in your sentence)* for _____
(describe crime or enhancement that resulted in the longest term). This controlling offense term was found to have been committed on _____ *(month/day/year)*. I was born on _____ *(month/day/year)*. Thus, I was less than 23 years of age when the controlling offense was committed.

My sentence is not a “Second Strike” or “Third Strike” sentence (Penal Code section 667, subs. (b)-(i)), it does not include a five-year prior serious felony enhancement (Penal Code section 667, subd. (a)), it does not include a “One Strike”

sentence for a sex offense subject to “Jessica’s Law” (Penal Code section 667.61), and it does not include a term of “life without the possibility of parole” (LWOP). *(Check your sentence and make sure it does not have any of these characteristics.)*

I have not committed a crime after turning 23 years old for which I was sentenced to life in prison or for which “malice aforethought” is a necessary element of the crime.

(ii) Insufficient opportunity to present mitigation evidence.

I was sentenced on or about _____ *(month/day/year)* without the benefit of a baseline hearing for the purpose of making a record and preserving evidence for use at a future youth offender parole hearing. As a consequence, I did not have an adequate opportunity or motivation at sentencing to present sufficient information about how my young age and other circumstances at the time of my offense affected my actions and other mitigating evidence that I expect to be helpful when I become eligible for parole.

(b) Principal supporting authority:

People v. Franklin (2016) 63 Cal.4th 281

Penal Code section 3051

Penal Code section 4801

Please see the following “Memorandum of Points and Authorities in Support of Question 6” for more authorities and more details.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF QUESTION 6 OF MC-275

This memorandum supports petitioner's position that he is entitled to a baseline hearing to make a record and preserve evidence in anticipation of an eventual youth offender parole hearing pursuant to Penal Code section 3051.

A. The Legislature has created a new type of parole hearing for youthful offenders.

Penal Code section 3051 has established a new type of parole hearing for prisoners who were under 23 years of age when they committed the offense or enhancement that led to the longest term of imprisonment in their sentence. Prisoners are eligible for a "youth offender parole hearing" if they meet the following criteria:

- (1) They committed the offense or enhancement that led to the longest term of their sentence before they turned 23 years old;
- (2) Their sentence does not include a term for "life without the possibility of parole" (LWOP), it does not include a "One Strike" sentence based on a sex offense that is subject to "Jessica's Law" (Penal Code section 667.61), it is not a "Second Strike" or "Third Strike" sentence (Penal Code section § 667, subds. (b)-(i)), and it does not include a five-year prior serious felony enhancement (Penal Code section 667, subd. (a));
- (3) They have not committed a crime after turning 23 years old for which they were sentenced to life in prison or for which "malice aforethought" is a necessary element of the crime; and

(4) Either they have a determinate sentence with an expected release date that will result in more than 15 total years of incarceration (including consideration of conduct credit) or they have an indeterminate sentence with the possibility of parole.

(Pen. Code, § 3051.)

Prisoners who meet these criteria and who are serving a determinate sentence are eligible for release on parole during the their 15th year of incarceration unless previously released. (Pen. Code, § 3051, subd. (b)(1).)

Prisoners who are serving an indeterminate sentence are eligible for release during their 20th or 25th year of incarceration. (Pen. Code, § 3051, subs. (b)(2), (b)(3).)¹

B. The California Supreme Court has decided that prisoners who did not have sufficient opportunity at sentencing to make a record of evidence for future use at a youthful offender parole hearing and whose cases are still not final are entitled to a meaningful evidentiary hearing to preserve such evidence.

In *Franklin*, the California Supreme Court held that the recent enactment of Penal Code section 3051 mooted the defendant's challenge to the constitutionality of his sentence. (*Franklin, supra*, 63 Cal.4th at p. 268.) Significant here, the court also considered whether the defendant, who was sentenced before Penal Code section 3051

¹The criteria that is considered at a youth offender parole hearing is different than the criteria considered at an adult offender parole hearing and provides broader grounds for release. (See Pen. Code, § 4801, subd. (c).) For this reason, it is still important for offenders who have the right to an ordinary parole hearing before their 20th or 25th year of incarceration (youthful offenders who are serving a 15-year-to-life sentence, for example) to preserve evidence for use at a youth offender parole hearing. The information needs to be available in case they are not released at their first parole hearing.

was enacted, should be afforded an opportunity to make a record of favorable evidence about how his young age and other circumstances in existence at the time of his offense affected his actions, so the evidence will be preserved for consideration at an eventual youth offender parole hearing many years in the future. (*Id.* at pp. 268-269.) The court concluded that the case should be remanded with directions to the superior court to consider whether the defendant had a fair opportunity to make a record at sentencing, and if not, for a baseline evidentiary hearing to be conducted. (*Id.* at pp. 269, 284.)

In reaching this disposition, the court noted that the Board of Parole Hearings (Board) will be required at future youth offender parole hearings to “give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity.” (*Franklin, supra*, 63 Cal.4th at p. 283 [emphasis added], quoting Pen. Code, § 4801, subd. (c).) Based largely on this directive to compare past and present maturity, the court concluded that the parole statutes that created the new youth offender parole hearings “contemplate that information regarding the juvenile offender’s characteristics and circumstances *at the time of the offense* will be available at the youth offender hearing to facilitate the Board’s consideration.” (*Id.* at p. 283 [emphasis added].) The court further concluded that the collection of such evidence is best accomplished at or near the time of the offense was committed:

Assembling such statements “about the individual before the crime” is typically a task more easily done at or near the time of the juvenile’s offense rather than decades later when memories have faded, records may have been lost or destroyed, or family or community members may have relocated or passed away. In addition, section 3051, subdivision (f)(1) provides that any

“psychological evaluations and risk assessment instruments” used by the Board in assessing growth and maturity “shall take into consideration ... any subsequent growth and increased maturity of the individual.” Consideration of “subsequent growth and increased maturity” implies the availability of information about the offender when he was a juvenile.

(*Id.* at pp. 283-284.)

Based on this conclusion, the court determined that, if the defendant in *Franklin* did not in fact have sufficient opportunity to make a record of information relevant to his eventual youth offender parole hearing, he was entitled to a substantial and meaningful evidentiary hearing where he would be entitled to submit documentary evidence and even present live testimony, if appropriate:

[S]ubject to the rules of evidence. Franklin may place on the record any documents, evaluations, or testimony (subject to cross-examination) that may be relevant at his eventual youth offender parole hearing, and the prosecution likewise may put on the record any evidence that demonstrates the juvenile offender’s culpability or cognitive maturity, or otherwise bears on the influence of youth-related factors. The goal of any such proceeding is to provide an opportunity for the parties to make an accurate record of the juvenile offender’s characteristics and circumstances at the time of the offense so that the Board, years later, may properly discharge its obligation to “give great weight to” youth-related factors (§ 4801, subd. (c)) in determining whether the offender is “fit to rejoin society” despite having committed a serious crime “while he was a child in the eyes of the law” [citation].

(*Franklin, supra*, 63 Cal.4th at p. 284.)

C. Habeas corpus appears to be available as a vehicle to request a baseline evidentiary hearing pursuant to *Franklin* in cases where judgment is final and the time to appeal has passed.

Franklin did not address whether cases no longer in trial or on active appeal should be reopened for an evidentiary hearing. In a petition for review in the still-ongoing case of

In re Reyes ([G052777](#)),² however, the California Supreme Court took the first step toward a grant of *Franklin* relief to a habeas petitioner whose judgment was final, and ordered the Court of Appeal to issue an order to show cause as follows:

The Secretary of the Department of Corrections and Rehabilitation is to be ordered to show cause, when the matter is placed on calendar, why petitioner is not entitled to make a record of “mitigating evidence tied to his youth.”
[Citing *Franklin*.]

(See Order dated June 29, 2016, *In re Reyes* ([S233936](#))³.) Based on the Supreme Court’s actions in *Reyes*, habeas relief thus appears to be the proper vehicle for seeking a baseline hearing in cases where the time for direct appeal has passed.

C. Remedy and appointment of counsel.

Based on *Franklin*, *Reyes*, and the supporting facts set forth in the preceding section, I meet the requirements for my case to be re-opened so I can make and preserve a record of mitigating evidence tied to my youth for consideration at a future youthful offender parole hearing. The court is respectfully requested to issue an order directing the Department of Corrections and Rehabilitation to show cause why my case should not be reopened for this purpose.

I also request that counsel be appointed to represent me at proceedings ordered by this court. (Cal. Rules of Court, rules 4.551(c)(2), 8.385(f).) I am indigent and unable to hire my own attorney.

²http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=43&doc_id=2124657&doc_no=G052777

³http://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=0&doc_id=2139104&doc_no=S233936

CHECK: Carefully check everything in this Attachment, both the parts already printed and everything added by you, for accuracy. Make any needed corrections.

SIGN AND DATE: Sign and date the Verification of Attachment below on this page.

ATTACH: Add all pages of this Attachment (and any continuation sheets you prepared) to your form MC-275.

COMPLETE AND CHECK MC-275 FORM: If you have not completed and signed your form MC-275, do that next. Follow the "Instructions for a *Franklin* Habeas Corpus Petition" handout. Check everything again when done.

VERIFICATION OF ATTACHMENT

DECLARATION: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date

Signature of petitioner