

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTIE CLORE,

Defendant-Appellant.

UNPUBLISHED

January 16, 2001

No. 228439

Oakland Circuit Court

LC No. 00-171319-FH

Before: Markey, P.J., and Whitbeck and J. L. Martlew*, JJ.

PER CURIAM.

Defendant Christie Clore appeals as of right from her sentence of one to twenty years in prison with 113 days' credit for her conviction of arson of a dwelling house,¹ imposed after a jury trial. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Clore, who was born in December 1985, was charged with arson of a dwelling house. The prosecution against her was automatically waived to circuit court,² where she was found guilty as charged. The trial court was required to impose an adult sentence.³ At sentencing, defense counsel noted that the Department of Corrections (DOC) had no separate facility for female inmates under age sixteen. Therefore, defense counsel asked the trial court to place Clore on electronic tether in lieu of incarceration. The trial court expressed dismay at the prospect of sentencing a fourteen-year-old female to an adult prison. Nevertheless, the trial court concluded that the crime she committed was "vicious," "dastardly," "mean-spirited," that it had devastating financial effects, and that it left two people homeless.

¹ MCL 750.72; MSA 28.267.

² MCL 600.606; MSA 27A.606; MCL 764.1f(2)(a); MSA 28.860(6)(2)(a).

³ MCL 769.1(1)(a); MSA 28.1072(1)(a).

* Circuit judge, sitting on the Court of Appeals by assignment.

II. Arguments On Appeal And Standard Of Review

Clore first contends that sentencing her to an adult prison constitutes cruel or unusual punishment, violating Const 1963, art 1, § 16. She emphasizes that the sentence allows her to be placed in the proximity of adult offenders, some of whom have committed violent crimes, without direct supervision by custodial personnel. Clore also notes that the fact that she has not yet been physically harmed by this arrangement is irrelevant to the merit of her argument.⁴

Clore also contends that the constitutional guarantee of equal protection under Const 1963, art 1, § 2 applies to prisoners.⁵ However, she argues, the sentence the trial court imposed in this case denies her equal protection under the law because the state has established a separate correctional facility for young male offenders, but not for young female offenders. In other words, if she were male rather than female, she would be placed in a facility with other young offenders. Merely by virtue of her gender, she asserts, she is treated differently by being placed with older offenders.

Because both of Clore's arguments are constitutional in nature, we examine these issues de novo.⁶

III. Cruel Or Unusual Punishment

Const 1963, art 1, § 16, provides in relevant part that "cruel or unusual punishment shall not be inflicted[.]" "In determining whether a punishment is cruel or unusual, one must look to the gravity of the offense and the harshness of the penalty, compare the penalty to those imposed for other crimes in this state as well as the penalty imposed for the instant offense by other states, and consider the goal of rehabilitation."⁷

Clore does not contend that arson is a minor offense unworthy of a prison sentence.⁸ Nor has she demonstrated that other states would punish her differently for this offense,⁹ the prison facility undermines the goal of rehabilitation for her, or that placing her in prison will deny her

⁴ See *Helling v McKinney*, 509 US 25, 33; 113 S Ct 2475; 125 L Ed 2d 22 (1993).

⁵ *Neal v Dep't of Corrections (On Rehearing)*, 232 Mich App 730, 739; 592 NW2d 370 (1998).

⁶ See *People v McRunels*, 237 Mich App 168, 171; 603 NW2d 95 (1999).

⁷ *People v Launsburry*, 217 Mich App 358, 363; 551 NW2d 460 (1996).

⁸ See, generally, *People v Foster*, 103 Mich App 311, 316; 302 NW2d 862 (1981) ("Arson is a more serious offense than other crimes involving the burning of property because of the possibility that those who reside in the dwelling will be killed in the fire.").

⁹ See *Ratliff v Cohn*, 693 NE 2d 530 (Ind, 1993), *Commonwealth v Lucas*, 424 Pa Super 173, 178-179; 622 A2d 325 (1993), *State v Delflorio*, 128 NH 309, 316; 512 A2d 1133 (1986), and cases cited therein demonstrating that other state courts have concluded that placing a juvenile in an adult facility does not violate the Eighth Amendment protection against cruel and unusual punishment. Note also that while Const 1963, art 1, § 16 may be interpreted more broadly than the Eighth Amendment, nothing requires a broader interpretation in every case. See, generally, *Carlton v Dep't of Corrections*, 215 Mich App 490, 505-506; 546 NW2d 691 (1996).

any necessities. While we acknowledge that she need not show actual harm to prevail on this issue,¹⁰ the absence of evidence of harm and these other potentially persuasive factors leads us to conclude that sentencing her to prison was not cruel or unusual given the nature and severity of this offense as well as her age.¹¹ Moreover, this Court has already concluded that sentencing a juvenile to life in prison without the possibility of parole is not cruel or unusual punishment for the crime of murder.¹² In support of that conclusion, this Court noted that there is no right to be treated as a juvenile.¹³ Surely, then, this lesser prison sentence imposed pursuant to the sentencing guidelines, which is presumed proportionate and not cruel or unusual in terms of its length,¹⁴ is constitutionally sound.

IV. Equal Protection

Const 1963, art 1, § 2, provides in relevant part that “[n]o person shall be denied the equal protection of the laws[.]” Just recently, in *In re RFF*,¹⁵ another panel of this Court outlined the general contours of the equal protection doctrine:

Generally, equal protection requires that persons in similar circumstances be treated similarly. *Thompson v Merritt*, 192 Mich App 412, 424; 481 NW2d 735 (1991). “[I]t is well established that, even if a law treats groups of people differently, it will not necessarily violate the guarantee of equal protection.” *Doe v Dep’t of Social Services*, 439 Mich 650, 661; 487 NW2d 166 (1992). Neither constitution^[16] has been interpreted to require absolute equality. *Id.* When legislation is challenged as violative of the equal protection guarantee under either constitution, it is subjected to judicial scrutiny to determine whether the goals of the legislation justify the differential treatment it authorizes. *Id.* at 661-662. The level of scrutiny applied depends on the type of classification created by the statute and the nature of the interest affected by the classification. *People v Pitts*, 222 Mich App 260, 272-273; 564 NW2d 93 (1997).

¹⁰ *Helling, supra* at 33.

¹¹ We do not intend to suggest that a person of any age may be housed with a general prison population merely because the Legislature authorizes such incarceration. If the Legislature further lowers the age for sentencing juveniles as adults, we may one day be presented with a vastly different situation under this cruel and unusual analysis.

¹² *Launsbury, supra* at

¹³ *Id.*, citing *People v Hana*, 443 Mich 202, 220; 504 NW2d 166 (1993).

¹⁴ *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987); *People v Terry*, 224 Mich App 447, ; 569 NW2d 641 (1997).

¹⁵ *In re RFF*, 242 Mich App 188, 205; 617 NW2d 745 (2000).

¹⁶ Referring to the federal equal protection guarantee in the Fourteenth Amendment as well as the state constitutional guarantee in Const 1963, art 1, § 2.

Clore alleges that there is gender distinction in the way the state houses juvenile offenders. Because gender is a suspect classification,¹⁷ it is subject to the substantial relationship test.¹⁸ Under this test, a classification must be substantially related to an important governmental interest to pass constitutional muster.¹⁹

Clore substantively challenges the statute that authorized the state to build the separate facility for young male offenders. Thus, we first turn our attention to MCL 791.220g(1); MSA 28.2290(7)(1) to determine what, if any, gender classification exists in the law that would treat Clore and other young female offenders differently from young male offenders. MCL 791.220g(1); MSA 28.2290(7)(1) authorizes, but does not require, the state to establish a youth correctional facility. Nowhere in the language of the statute is there any attempt to limit such a new facility to housing male offenders. Nor is there any evidence that the state or prison officials are withholding this type of facility from young female offenders out of any animus or bias.

Rather, as far as we can discern from the record created at the sentencing hearing, the only reason the state does not provide a separate facility for young female offenders who were sentenced as adults is because there are so few young female offenders. By implication, the record suggests that there are far more young male offenders sentenced as adults, meriting the significant capital necessary to construct such a facility. Though we do not intend to imply that financial efficiency alone would merit unequal treatment, in this case we see the probability that current prison facilities for female offenders are far more likely to be able to meet the need to keep young offenders out of the general population than prisons for male offenders. The inability to segregate the relatively larger population of young male offenders from older male offenders created a substantial governmental interest in finding an alternative to age-based segregation within the existing prisons for male offenders, leading to this disparate treatment.²⁰ While we see no obstacle in the law or social policy barring a similar facility for young female offenders, in this limited circumstance we do not view the absence of a facility as an equal protection violation because the very difference in need for this separate facility permits the current situation.²¹

Affirmed.

/s/ Jane E. Markey
/s/ William C. Whitbeck
/s/ Jeffrey L. Martlew

¹⁷ *In re Hawley*, 238 Mich App 509, 513; 606 NW2d 50 (1999).

¹⁸ *In re Parole of Franciosi*, 231 Mich App 607, 613; 586 NW2d 542 (1998), *aff'd* 461 Mich 347 (2000).

¹⁹ *Dep't of Civil Rights ex rel Forton v Waterford Twp Dep't of Parks and Recreation*, 425 Mich 173, 195; 387 NW2d 821 (1986).

²⁰ See *Neal v Dep't of Corrections*, 230 Mich App 202, 209; 583 NW2d 249 (1998).

²¹ Prison officials are still free to give Clore the remedy she essentially seeks – segregation from the adult offender population – and might be wise to do so. *Id.*