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People v. Olivas: Equalizing the Sentencing of Youthful Offenders With Adult Maximums

William E. Harris

People v. Olivas: Equalizing the Sentencing of Youthful Offenders With Adult Maximums

In a landmark decision, the California Supreme Court in *People v. Olivas*[1] held that the commitment to the California Youth Authority of a person convicted of a misdemeanor for a period in excess of the maximum county jail sentence that might be imposed for the same offense was unconstitutional. It held such commitments to be violative of the equal protection clause of the California Constitution[2] and of the fourteenth amendment to the United States Constitution. In reaching this result the court declared that "personal liberty" is a fundamental interest; it accordingly applied the strict scrutiny test in reviewing the law.

The defendant, Jesus Olivas, was convicted in superior court of misdemeanor assault.[3] Misdemeanor assault carries a maximum county jail sentence of six months under the Penal Code.[4] A discretionary sentence alternative under Welfare and Institutions Code Section 1731.5[5] provides that a person convicted of a public offense and under the age of 21[6] at the time of apprehen-

1. 17 Cal. 3d. 236, 551 P.2d 375, 131 Cal. Rptr. 55 (1976).
2. CAL. CONST. art. 1, § 7.
3. CAL. PENAL CODE § 240 (West 1970).
4. CAL. PENAL CODE § 241 (West 1970).
5. CAL. WELF. AND INST. CODE § 1731.5 (West 1972):

> After certification to the Governor as provided in this article a court may commit to the authority any person convicted of a public offense who comes within subdivisions (a), (b), and (c), or subdivisions (a), (b), and (d), below:
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> (a) Is found to be less than 21 years of age at the time of apprehension.
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> (b) Is not sentenced to death, imprisonment for life, imprisonment for 90 days or less, or the payment of a fine, or after having been directed to pay a fine, defaults in payment thereof, and is subject to imprisonment for more than 90 days under the judgment.
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> (c) Is not granted probation.
>
> (d) Was granted probation and probation is revoked and terminated.
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> The Youth Authority shall accept a person committed to it pursuant to this article if it believes that the person can be materially benefited by its reformatory and educational discipline, and if it has adequate facilities to provide such care.

6. Since juveniles must be at least 16 years of age before they can be referred to the criminal courts for prosecution and conviction of a public offense, CAL. WELF. AND INST. CODE § 707 (West Supp. 1977), the sub-class of

sion may be committed to the California Youth Authority. Welfare and Institutions Code Section 1770[7] provides that, for misdemeanants, such a commitment shall last two years or until the youth reaches ages 23, whichever occurs *later.* Jesus was 19 years old at the time of his conviction and the judge ordered him committed to the Youth Authority. This meant that at the time of judgment Jesus faced the possibility of incarceration in a Youth Authority institution for more than three years.[8] Even if he were released prior to this time, which was highly probable,[9] Jesus would have been placed on parole for the remainder of his commitment.[10] On the other hand, if the judge had chosen instead to sentence him to a term of six months in the county jail, Jesus would have faced a maximum confinement term of only 90 days: the 90 days he had already spent in custody awaiting trial would have been credited to any jail sentence imposed.[11]

Jesus appealed from his commitment to the Youth Authority on the grounds that it constituted cruel and unusual punishment and that it infringed on his right of personal liberty, thereby denying him the equal protection of the laws. The California Supreme Court, in bank, in an opinion by Chief Justice Wright, unanimously sustained the equal protection challenge,[12] holding unconstitutional Section 1770[13] "insofar as it authorized the

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persons who may be committed to the Youth Authority under section 1731.5 is limited to individuals between the ages of 16 and 21 years.

7. CAL. WELF. AND INST. CODE § 1770 (West 1972):

"Every person convicted of a misdemeanor and committed to the authority shall be discharged upon the expiration of a two-year period of control or when the person reaches his 23d birthday, whichever occurs later, unless an order for further detention has been made by the committing court pursuant to article 6 (commencing with Section 1800) of Chapter 1 of Division 2.5."

Sections 1800-1803 provide for further detention of a Youth Authority commitment upon a showing that he would be physically dangerous to the public because of a mental or physical deficiency or abnormality. A jury trial is provided on the issue of dangerousness. For a complete discussion *see* note, *A Dangerous Commitment,* 2 PEPPERDINE L. REV. 117 (1974).

8. Virtually all persons between the ages of 16 and 21 years who were convicted of a misdemeanor similarly faced the threat of longer periods of incarceration when committed to the Youth Authority than did their counterparts who drew county jail sentences instead or than did like offenders who were over the age of 21 at the time of their apprehension. For example, under the minimum two year provision of section 1770, the shortest control period for a misdemeanant committed to the Youth Authority is twice as long as the one year maximum permissible county jail sentence for a misdemeanor. CAL. PENAL CODE § 19a (West 1970).

9. The mean length of stay in Youth Authority institutions prior to release on parole for both the calendar year of 1975 and the fiscal year of 1975-1976 (July 1 to July 1) was 12.7 months. DIVISION OF RESEARCH, STATE OF CALIFORNIA DEPARTMENT OF YOUTH AUTHORITY, MONTHLY STATISTICAL SUMMARY table XI (July 1976).

10. CAL. WELF. AND INST. CODE § 1766 (West 1972).

11. CAL. PENAL CODE § 2900.6 (West Supp. 1977).

12. 17 Cal. 3d 236, 243-51, 551 P.2d 375, 379-84, 131 Cal. Rptr. 55, 59-64 (1976).

13. CAL. WELF. AND INST. CODE § 1770 (West 1972).

Youth Authority to maintain control over misdemeanants committed to its care for any period of time in excess of the maximum jail term permitted by statute for the offense or offenses committed."[14] Since Jesus had been confined in a Youth Authority institution for more than six months, the maximum county jail term, the court modified the trial court judgment by ordering that Jesus be released from custody, if not otherwise under a lawful restraint, and that his commitment to the Youth Authority be terminated. As so modified, the court affirmed the judgment.[15]

Virtually every state[16] and federal [17] court that has entertained a challenge to a youthful offender sentencing scheme closely akin to California's has upheld longer sentences imposed on youthful offenders. For example, a plethora of federal cases from nearly every circuit[18] has upheld a similar provision under the Federal Youth Corrections Act.[19] This provision authorizes the incarceration of youthful offenders between the ages of 18 and 22 years for an indeterminate term with a possible maximum of six years and an automatic conditional release after four years even though the maximum adult jail sentence for a federal misdemeanor is one year.[20]

The seminal federal case is *Cunningham v. United States*.[21] The defendant there, a misdemeanant under 21 years old, appealed his commitment under the Federal Youth Corrections Act on the grounds that his incarceration beyond the adult maximum of one year, which he had already served, constituted

14. 17 Cal. 3d at 257, 551 P.2d at 389, 131 Cal. Rptr. at 69.
15. *Id.*
16. *E.g.*, Smith v. Sargent, 305 A. 2d 273 (Me. 1973); In re K.V.N., 116 N.J. Super. 580, 283 A.2d 337 (1971); Smith v. State, 444 S.W.2d 941 (Tex. Civ. App. 1969); State v. Meyer, 228 Minn. 286, 37 N.W.2d 3 (1949).
17. *See infra* note 18.
18. *E.g.*, Caldwell v. United States, 435 F.2d 1079 (10th Cir. 1970); Abernathy v. United States, 418 F.2d 288 (5th Cir. 1969); United States v. Rehfield, 416 F.2d 273 (9th Cir. 1969), *cert. denied*, 397 U.S. 996 (1970); United States v. Dancis, 406 F.2d 729 (2d Cir.), *cert. denied*, 394 U.S. 1019 (1969); Johnson v. United States, 374 F.2d 966 (4th Cir. 1967); Brisco v. United States, 368 F.2d 214 (3d Cir. 1966); Kotz v. United States, 353 F.2d 312 (8th Cir. 1965); Carter v. United States, 113 U.S. App. D.C. 123, 306 F.2d 283 (1962); Cunningham v. United States, 256 F.2d 467 (5th Cir. 1958).
19. 18 U.S.C. §§ 5010(b), 5017(c) (1970).
20. 18 U.S.C. § 1 (1970).
21. 256 F.2d 467 (5th Cir. 1958).

cruel and unusual punishment and violated his due process rights. The Court rejected these arguments, relying primarily on earlier state court decisions upholding similar sentencing schemes.[22] At the close of the opinion, without request, the court also raised and briefly reviewed an equal protection challenge to the sentencing scheme. Relying on two earlier California decisions[23] and on *Minnesota v. Probate Court,*[24] a United States Supreme Court decision, the court held that the classifications created by the legislation in question were valid under the rational basis standard of review.

The rationale uniformly expressed by the courts for justifying longer sentences for youthful offenders was succinctly stated by Judge (now Chief Justice) Burger in *Carter v. United States*,[26] a decision reaffirming the holding in *Cunningham v. United States*:

> [T]he basic theory of that Act is rehabilitative and in a sense this rehabilitation may be regarded as comprising the *quid pro quo* for a longer confinement but under different conditions and terms than a defendant would undergo in an ordinary prison. The reasoning of the *Cunningham* court is relevant in this connection. The court there noted that the Youth Correction Act 'provides for and affords youthful offenders, . . . not heavier penalties and punishment than are imposed upon adult offenders, but the opportunity to escape from the physical and psychological shocks and traumas attendant upon serving an ordinary penal sentence while obtaining the benefits of corrective treatment, looking to rehabilitation and social redemption and restoration.'[27]

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22. *Id.* at 472.

23. In re Herrera, 23 Cal. 2d 206, 143 P. 2d 345 (1943); Ex parte Liddell, 93 Cal. 633 (1892).

24. 309 U.S. 270 (1940). The case involved a due process and equal protection challenge to a psychopathic sex offender commitment statute. The Court ultimately upheld the statute. On the equal protection issue the Court applied the rational basis standard of review.

25. 256 F.2d at 473.

26. 306 F.2d 283 (1962).

27. *Id.* at 285.

The United States Supreme Court to date has declined to review the question of longer sentences imposed upon youthful offenders. The Court's focus in the area of juvenile justice has been centered on according the same procedural safeguards to the juvenile during the adjudication stage of the proceedings as are enjoyed by adults in criminal prosecutions. Breed v. Jones, 421 U.S. 519 (1975) (double jeopardy clause extended to juvenile proceedings); In re Winship, 397 U.S. 358 (1970) (reasonable doubt standard held applicable to juvenile adjudicatory hearing); In re Gault, 387 U.S. 1 (1967) (right to notice of charges, right to counsel, right to confrontation of witnesses, and right to privilege against self incrimination granted to juveniles at adjudicatory hearing); *but see* McKeiver v. Pennsylvania, 403 U.S. 528 (1971) (right of jury trial denied to juveniles). In the seminal case of *In re Gault*, the defendant was adjudged a juvenile delinquent and committed to a state reformatory for the remainder of his minority, a period in excess of five years, for committing an offense punishable by a maximum adult imprisonment sentence of two months. The court specifically declined to

The most important local precedent facing the *Olivas* court was *In re Herrera*,[28] an earlier California Supreme Court decision which upheld the sentencing scheme in question.[29] Each of the three petitioners in *Herrera* was committed to the Youth Authority after two had plead guilty to misdemeanor assault and one had been found guilty of aggravated assault, a felony. The petitioners sought their discharges on the ground that the Youth Correction Authority Act[30] was unconstitutional, *inter alia*, because the classifications created by Section 1731.5 regarding age[31] and other commitment eligibility criteria were "unreasonable" and thus constituted denials of equal protection. It was also urged that the Act was "unreasonably discriminatory"[32] because of the potentially longer period of incarceration prescribed for Youth Authority Commitments under Section 1770.

The court, in a unanimous decision written by Justice Traynor, applied the rational basis test to the eligibility classifications and concluded that they were reasonably drawn, thereby rejecting the challenge to Section 1731.5.[33] In reference to the age classification the court stated:

> The Great value in treatment of youthful offenders lies in the timeliness in striking at the roots of recidivism. Reaching the offender during his formative years, it can be an impressive bulwark against the confirmed criminality that defies rehabilitation, for it is charac-

review the sentencing stage of the juvenile proceedings although it did recognize that the deprivation of liberty resulting from the "commitment" of a juvenile offender is analogous to imprisonment imposed on adult offenders. 387 U.S. at 36. Thus, the *Gault* court implicitly appears to have assumed the validity of confining youthful offenders for longer periods than adults for the same conduct. *See* In re Winship, 397 U.S. 358 (1970).

28. 23 Cal. 2d 206, 143 P.2d 245 (1943).

29. The issue of the constitutional validity of longer sentences for youthful misdemeamants was upheld by the California Supreme Court on three occasions prior to the turn of the century. Ex parte Nichols, 110 Cal. 651, 43 P. 9 (1896); Ex parte Liddell, 93 Cal. 633, 29 P. 251 (1892); Boys and Girls Aid Society v. Reis, 71 Cal. 627, 12 P. 796 (1887). In *Liddell* and *Nichols* the court entertained and rejected equal protection challenges brought against sentencing statutes which required a minor who was convicted of a misdemeanor to serve a reformatory sentence longer than a county jail sentence for the same offense.

30. CAL. WELF. AND INST. CODE §§ 1700 *et seq.* (West 1972), added by Cal. Stat's ch. 937, p. 2522 (1941).

31. 23 Cal. 2d at 212-13, 143 P. 2d at 248.

32. *Id.* at 213, 143 P.2d at 248-49.

33. *Id.*, 143 P.2d at 248-49.

teristic of youth to be responsive to good influence as it is susceptible to bad.[34]

The court proceeded to summarily reject the challenge to Section 1770 by merely stating that "[t]his contention is answered by the many cases upholding similar provisions with respect to juvenile offenders."[35]

The *Olivas* court stated that its sole rationale for reconsidering the validity of the holding in *Herrera* and for its disapproval of that case was that the standard of review applied by the *Herrera* court, the rational basis test, had since become outmoded in cases like the present one where a fundamental right is involved.[36] The court concluded that *Herrera* contained a "major constitutional infirmity"[37] because it was decided before the full development of the fundamental interest analysis and the strict scrutiny standard of judicial review. On this point the court stated in part:

> It is not without significance that *Herrera* was decided long before fundamental interest analysis and the strict scrutiny standard became fully delineated tools for use in constitutional evaluation. The analysis undertaken in *Herrera* was much different from that we engage in today . . . . While the malleability of youth noted in *Herrera* may have remained fairly constant through the intervening years, constitutional analysis has undergone considerable metamorphosis. Where once merely reasonable classifications were sufficient, the state must now show a compelling interest if fundamental rights are affected as in the present case.[38]

The court is, of course, correct in its observation that equal protection analysis in the fundamental interest area has undergone considerable development since it was first introduced one year prior to *Herrera* in *Skinner v. Oklahoma*.[39] The court went one step further, however, and urged that this development in the law was the catalyst for the court's rejection of *Herrera*. This additional step strongly implies that judicial authority exists which recognizes that when a classification scheme operates to deprive one group of its individual liberty for a longer period than it deprives another, similar group, a fundamental right has been affected and that the stricter standard of review

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34. *Id.*, 143 P.2d at 248.

35. *Id.* at 213-14, 143 P.2d at 249. The court cited, *inter alia*, the three nineteenth century California Supreme Court decisions discussed *supra* note 29.

36. 17 Cal. 3d at 252, 551 P.2d at 385, 131 Cal. Rptr. at 65.

37. *Id.* at 253, 551 P.2d at 386, 131 Cal. Rptr. at 66.

The *Olivas* court also used the "constitutional infirmity" contention to disapprove Cunningham v. United States, 256 F.2d 467 (5th Cir. 1958) and its progeny. 17 Cal. 3d at 252-54, 551 P.2d at 386-87, 131 Cal. Rptr. 66-67.

38. *Id.* at 252, 551 P.2d at 385, 131 Cal. Rptr. at 65.

39. 316 U.S. 535 (1942).

is therefore required. However, as discussed below, the case authority is so meager in support of this proposition that, as an appellate court decision, *Olivas* can be said to have broken new ground by declaring personal liberty to be a fundamental interest necessitating a strict scrutiny level of review. Thus the "constitutional infirmity" contention, when closely examined, only explains the *method* the court employed in striking down the sentencing scheme in *Olivas* but does not, as intended, offer a plausible rationale for prompting the court to do so.

First, it bears noting that the rational basis test is still a viable analytical tool in the general area of unequal deprivations of personal liberty as is represented by the recent United States Supreme Court decision of *McGinnis v. Royster*.[40] In *McGinnis* an equal protection challenge was brought by two state prisoners against a New York penal law which denied "good time" credit towards parole eligibility for presentence county jail incarceration. However, those persons who were released on bail prior to sentencing received "good time" credit for the entire period of their prison confinements. Had the petitioners received "good time" credit for their county jail confinements they would have been able to appear before the parole board four and three months earlier, respectively. A three-judge district court[41] held that the scheme lacked any rational basis and thus violated the requirements of the equal protection clause. However, the Supreme Court, also applying the rational basis test, upheld the law in a seven to two decision.[42] The dissent agreed that the rationale basis test was the standard of review but disagreed with the majority's result.[43]

The *Olivas* court held that "personal liberty is a fundamental interest, second only to life itself."[44] The court narrowly defined personal liberty as the freedom from involuntary incarceration as well as the freedom from the restraints that accompany parole.[45] The court was able to muster only two federal district

40. 410 U.S. 263 (1973).
41. McGinnis v. Royster, 332 F. Supp. 973 (S.D. N.Y. 1971).
42. 410 U.S. at 277.
43. *Id.* at 278-283.
44. 17 Cal. 3d at 251, 551 P.2d at 384, 131 Cal. Rptr. at 64.
45. *Id.* at 245, 551 P.2d at 380-81, 131 Cal. Rptr. at 60-61. For the standard parole conditions see *infra* note 114.

court cases purporting to declare such an interest to be fundamental for equal protection analysis.

The first, *Robinson v. York*,[46] involved a petition to the district court for a writ of habeas corpus brought by a woman serving a Connecticut reformatory sentence. The court granted the writ and sustainted her equal protection challenge to a commitment statute which permitted women to be imprisoned for longer periods than men convicted of the same offenses.[47] Toward the end of a rather rambling opinion Judge Blumenfield stated: "Among the rights protected by the Constitution next to life itself, none is more basic than liberty."[48] The *Olivas* court seized upon this statement and concluded that the strict scrutiny test was applied in *York* because liberty had been recognized as a fundamental interest.[49] However, a close reading of *York* reveals that this conclusion is erroneous. It is apparent that Judge Blumenfield applied the stricter standard of review to the law on a "suspect classification" theory rather than on a fundamental interest theory as the *Olivas* court asserted. In determining the appropriate standard of review, Judge Blumenfield drew an analogy between classifications based on sex and suspect classifications based on race[50] when he stated:

> While the Supreme Court has not explicitly determined whether equal protection rights of women should be tested by this rigid standard, the strict scrutiny test, it is difficult to find any reason why adult women, as one of the specific groups that compose humanity, should have a lesser measure of protection than a racial group.[51]

The second case cited by the *Olivas* court does lend support to the fundamental interest approach. In *Bolling v. Manson*[52] a class action was brought by certain reformatory inmates to enjoin the enforcement of a Connecticut statutory scheme that denied "good time" credit to youthful offenders and women serving "indefinite" reformatory sentences while granting such credit to similar inmates who were serving "definite" sentences in the same institutions. Relying primarily on several funda-

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The court indicated that the concept of "personal liberty" did not extend to slight impingements on a person's freedom of action such as the age minimum placed on the purchase and consumption of alcholic beverages or slightly different conditions of probation or parole. *Id.* at 253, 551 P.2d at 386, 131 Cal. Rptr. at 66.

46. 281 F. Supp. 8 (D. Conn. 1968).
47. *Id.* at 18.
48. *Id.* at 16.
49. 17 Cal. 3d at 247, 551 P.2d at 382, 131 Cal. Rptr. at 62.
50. Loving v. Virginia, 388 U.S. 1 (1967).
51. Robinson v. York, 281 F. Supp. 8, 14 (D. Conn. 1968).
52. 345 F. Supp. 48 (D. Conn. 1972).

mental rights decisions of the United States Supreme Court[53] and on *Robinson v. York*,[54] the three-judge district court, without discussion, held that the classifications in question impinged "directly on personal liberty, one of the most fundamental rights of the individual."[55] The court then applied the strict scrutiny test and held that the statute violated the mandates of the equal protection clause.[56]

To bolster this meager direct case authority, the *Olivas* court drew from a number of other sources in an effort to prove that the concept of personal liberty, as they had defined it, had long been recognized in American jurisprudence as an important individual right. The court noted that the origins of the concept "can be traced as far back in Anglo American history as the [13th Century] Magna Carta"[57] and that the concept was later embodied in the due process clause of the fourteenth amendment as well as in the due process[58] and unanimous jury verdict[59] provisions of the California Constitution.[60] The court also contended that the "fundamental importance of personal liberty"[61] is implicit in the various due process guarantees accorded to criminal defendants by numerous decisions of the United States Supreme Court.[62] The court added to this list of support-

53. Weber v. Aetna Casualty and Surety, 406 U.S. 164 (1972) (right to familial recognition of an illegitimate child); Shapiro v. Thompson, 394 U.S. 618 (1969) (right to travel); Harper v. Virginia State Board of Elections, 383 U.S. 663 (1966) (right to vote); Skinner v. Oklahoma, 316 U.S. 535 (1942) (right of procreation).

54. 281 F. Supp. 8 (D. Conn. 1968).

55. Bolling v. Manson, 345 F. Supp. 48, 51 (D. Conn. 1972).

56. *Id.* at 52.

Note that the significance of the *Bolling* court's approach and result is diluted by the fact that when applying the strict scrutiny test the court held that not only did the state lack a compelling interest for treating the two groups differently, but the scheme also lacked any rational basis. *Id.* at 51. Thus, the statute, unlike the scheme reviewed in *Olivas*, could have been struck down without utilizing the fundamental interest approach.

57. 17 Cal. 3d at 248, 551 P.2d at 383, 131 Cal. Rptr. at 63.

58. CAL. CONST. art. 1, § 7.

59. CAL. CONST. art. 1, § 16.

60. 17 Cal. 3d at 250, 551 P.2d at 384, 131 Cal. Rptr. at 64.

61. *Id.* at 249, 551 P.2d at 384, 131 Cal. Rptr. at 64.

62. *E.g.*, Duncan v. Louisiana, 391 U.S. 145 (1968) (right to trial by jury); Klopfer v. North Carolina, 386 U.S. 213 (1967) (right to speedy trial); Turner v. Louisiana, 379 U.S. 466 (1965) (right to impartial jury); Pointer v. Texas, 380 U.S. 400 (1965) (confrontation of one's accusers); Gideon v. Wainwright, 372 U.S. 335 (1963) (right to counsel); In re Oliver, 333 U.S. 257 (1948) (right to notice of the

ing authorities several recent California Supreme Court decisions which extended the right to jury trials[63] and the "reasonable doubt" standard of proof[64] to involuntary civil commitment hearings.[65]

After declaring "personal liberty" to be a fundamental interest and concluding that the sentencing scheme in question affected this interest, all that remained for the court was to apply the potent strict scrutiny test to the law. Under this test the burden is, of course, shifted to the state to "first establish that it has a compelling interest which justifies the law and then demonstrate that the distinctions drawn by the law are necessary to further that purpose."[66]

The People's primary defense in support of the unequal sentencing scheme rested on the theory of rehabilitation[67]—the rationale traditionally relied upon by the courts in upholding longer sentences for youthful offenders.[68] In applying the compelling interest standard to this contention, the court concluded that the state's interest in the rehabilitation of youthful offenders was not an adequate "*quid pro quo*"[69] to justify the longer sentences imposed on misdemeanants committed to the Youth Authority; the loss of personal liberty suffered by the latter group was too onerous to be exchanged for the goal of rehabilitation.[70] In support of this conclusion the court stated in part:

> Irrespective of whatever amenities are provided to a ward confined in an institution of the Youth Authority in order to differentiate the quality of his incarceration from those persons confined to a county jail or state prison, the plain and simple fact remains that he cannot leave of his own free will. His daily routine is regimented, his personal habits and intimate private matters are subject to the scrutiny of others; in short his life is completely controlled in a most basic sense.[71]

Applying the second portion of the strict scrutiny test, the court held that the People failed to demonstrate how the state's interest in rehabilitation, assuming it is compelling, was furthered by prescribing longer sentences for youthful offenders.[72]

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charges and right to public trial); Lisenba v. California, 314 U.S. 219 (1941) (criminal trial must proceed with fundamental fairness).

63. People v. Feagley, 14 Cal. 3d 338, 535 P.2d 373, 121 Cal. Rptr. 509 (1975); In re Gary W., 5 Cal. 3d 296, 486 P.2d 1201, 96 Cal. Rptr. 1 (1971).
64. People v. Burnick, 14 Cal. 3d 306, 535 P.2d 352, 121 Cal. Rptr. 488 (1975).
65. 17 Cal. 3d at 250, 551 P.2d at 384, 131 Cal. Rptr. at 64.
66. *Id.* at 251, 551 P. 2d at 385, 131 Cal. Rptr. at 65.
67. *Id.* at 252-53, 551 P.2d at 385-86, 131 Cal. Rptr. at 65-66.
68. *See* text accompanying notes 26 and 27 *supra*.
69. 17 Cal. 3d at 253, 551 P.2d at 386, 131 Cal. Rptr. at 66.
70. *Id.* at 253-54, 551 P.2d at 386, 131 Cal. Rptr. at 66.
71. *Id.*
72. *Id.* at 255, 551 P.2d at 387, 131 Cal. Rptr. at 67.

The People's major argument[73] was that Section 1770 sets forth the "minimum period of confinement for rehabilitation."[74] The court responded to this contention by stating that there was no way to "determine what minimum period of confinement is sufficient to achieve the state's goal of meaningful rehabilitation."[75] This discussion was terminated by contrasting Section 1770 with the recently amended portion of the Federal Youth Corrections Act[76] which authorizes the commitment of juvenile offenders until they reach 21 years or for the maximum term which could have been imposed on an adult convicted of the same offense, whichever is *sooner*. The court stated that

> [S]ince the purpose of the Federal Youth Corrections Act is to substitute rehabilitation for punishment in a manner similar to the California legislation, it cannot now be argued that youthful California misdemeanants *necessarily* require longer rehabilitative detention. There has been no showing made that youthful offenders *necessarily* require longer periods of confinement for rehabilitative purposes than older adults.[77]

By holding that the goal of rehabilitation does not constitute a compelling state interest, the *Olivas* court substantially depreciated the importance of the rehabilitation ideal which, since before the turn of the century in California,[78] has been considered to outweigh and justify any greater loss of individual liberty imposed on youthful offenders. It is interesting to note in this regard that the *Olivas* court took care in the opinion to express its complete endorsement of and belief in the rehabilitation ideal and in its implementation.[79] However, the result in *Olivas* defies the sincerity of these sentiments. The inescapable conclusion is that a change in the court's attitude toward the practical administration of the rehabilitation ideal rather than any interim changes in the law resulted in the rejection of the sentencing scheme upheld over thirty years earlier.[80] The decision

73. The People also argued (without success) that a juvenile offender may have his conviction expunged after his release from the Youth Authority's control, thereby relieving him of the disabilities that may otherwise follow a misdemeanant. *Id.* at 256, 551 P.2d at 388, 131 Cal. Rptr. at 68.
74. *Id.* at 255, 551 P.2d at 387, 131 Cal. Rptr. at 67.
75. *Id.*
76. 18 U.S.C. § 5037(b) (Supp. V, 1975).
77. 17 Cal. 3d at 255-56, 551 P.2d at 388, 131 Cal. Rptr. at 68.
78. *See supra* note 29.
79. 17 Cal. 3d at 251-52, 257, 551 P.2d at 385, 389, 131 Cal. Rptr. at 65, 69.
80. *See* text accompanying notes 36-38 *supra*.

manifests the court's realization that the rehabilitation ideal—despite all honest efforts—still remains *only* an ideal and *not* a reality.[81] Thus, the nature of the longer periods of incarceration imposed on youthful offenders under the guise of "rehabilitation" is implicitly exposed in *Olivas* as what it always has been—greater punishment for committing the same prohibited conduct.

The ramifications of the *Olivas* decision were felt almost immediately by the Department of the Youth Authority. Shortly after the decision was handed down the California Supreme Court ordered the Authority to release from its control all misdemeanants who had been under its jurisdiction for periods equal to the maximum permissible county jail terms for their particular offenses.[82] The court added that *Olivas* also applied to so called "wobblers,"[83] that is, to offenses governed by Penal Code Section 17[84] which provides that when an offense is punishable as either a misdemeanor or a felony, in the discretion that the court, and the defendant is committed to the Youth Authority, the offense is deemed to be a *misdemeanor.* However, the court stayed the order to allow the legislature time to enact an amendment to Section 17.[85]

Penal Code Section 17 was amended[86] and became effective on August 31, 1976. As amended, it gave the trial court the

81. The California Legislature has clearly reached this realization as is evidenced by the recent passage of the "definite" sentencing act. S.B. 42, Cal. Stat's ch. 1139, p. 4752 (1976) (effective July 1, 1977). The new law declares "punishment" to be the purpose of imprisonment and, among other things, puts an end to the existing "indefinite" felony sentencing in California—which has been based on the principle of "rehabilitation"—and replaces it with fixed prison and parole terms for most felonies. *Id.*

82. Department of Youth Authority, Staff News, September 17, 1976, at 1, Col. 1 [hereinafter cited to as Staff News].

83. Los Angeles Herald Examiner, Sept. 4, 1976, Part A, at 2, Col. 6.

84. CAL. PENAL CODE § 17 (West 1970) provides in pertinent part:

> (b) When a crime is punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances:
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> . . . .
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> (2) When the court commits the defendant to the Youth Authority.

85. Herald Examiner, *supra* note 83.

Compliance with the latter part of the order meant that the Youth Authority would have been forced to release from incarceration between 450 and 500 youthful offenders convicted of such serious crimes as assault with a deadly weapon and second degree burglary. *Id.*; Staff News, *supra* note 82, at 2, col. 2. The practical effect of such a ruling would also force judges to send youthful offenders convicted of "wobblers" to state prison if they felt that such offenders needed more than one year's imprisonment.

86. Cal. Stat's ch. 1070, p. 4508 (1976).

option of characterizing a "wobbler" offense as a misdemeanor upon committing the defendant to the Youth Authority or of simply committing the defendant to the Youth Authority without characterizing the offense at all, in which case the offense would automatically be deemed to be misdemeanor upon the defendant's discharge from the Authority.[87] These changes apparently mean, in light of *Olivas*, that when the trial court chooses to designate the offense as a misdemeanor, the result would be the same as that reached under the older version of Penal Code Section 17: the defendant may remain under the jurisdiction of the Youth Authority for a maximum period of only one year, the maximum permissible county jail sentence for a misdemeanor.[88] But if the trial court declines to characterize it, the offense will then be treated as a felony while the defendant is under the jurisdiction of the Youth Authority.[89] This would change the permissible length of the commitment to coincide with the maximum state prison sentence that could be imposed for the offense as a felony.[90]

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87. *Id.* The amended portion of Section 17 now reads:

(b) When a crime is punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances:

. . . .

(2) When the court, upon committing the defendant to the Youth Authority, designates the offense to be a misdemeanor.

. . . .

(c) When a defendant is committed to the Youth Authority for a crime punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the county jail, the offense shall, upon discharge of the defendant from the Youth Authority, thereafter be deemed a misdemeanor for all purposes.

88. CAL. PENAL CODE § 19a (West 1970).

89. This interpretation is derived from the construction placed on Section 17 in its pre-1947 form which made no reference to the character of a "wobbler" when the defendant was committed to the Youth Authority. People v. Williams, 27 Cal. 2d 220, 163 P.2d 692 (1945); 31 OP. CAL. ATT'Y GEN. 200 (1958). It rests on the doctrine that if neither a state prison nor a county jail sentence is imposed for a "wobbler" offense the defendant retains the status of a person convicted of a felony. *See* People v. Zaccaria, 216 Cal. App. 2d 787, 131 Cal. Rptr. 383 (1963); C. FRICKE, CALIFORNIA CRIMINAL LAW 9-10 (10th ed. 1970).

90. The paradoxical effect of the *Olivas* decision and subsequent order by the court culminating in the amendment to Section 17 moves the maximum jurisdiction age for "wobbler" commitments from 23 years under the misdemeanor commitment section, CAL. WELF. AND INST. CODE § 1770 (West 1972), to 25 years under the felony commitment section, CAL. WELF. AND INST. CODE § 1771 (West 1972). *See* text, *infra*, accompanying note 93.

The amendment to Penal Code Section 17 was expressly made applicable to all Youth Authority commitments then under the Department's jurisdiction.[91] Apparently, the California Supreme Court was satisfied with the effect of the changes and the retroactive operation of the amendment for it subsequently deleted the inclusion of "wobblers" in its original order and reinstated the order demanding the release of "pure" misdemeanants.[92]

Several important issues not reviewed in *Olivas* but related thereto were later rendered moot by the Youth Authority's compliance with the California Attorney General's broad interpretation of *Olivas*. The Authority announced in an open letter to all wards[93] that, based on the Attorney General's opinion, it was extending the application of *Olivas* to include felony commitments from the adult courts. Thus, jurisdiction of felony commitments, including "wobblers," would be limited to the maximum period of the state prison sentence prescribed for the offense committed.[94] The upper limit of such commitments would be governed by the offender's 25th birthday under Welfare and Institutions Code Section 1771.[95]

In this same letter it was also pronounced that, in computing jurisdiction dates, misdemeanor and felony commitments would receive credit for all jail time served with respect to the offense committed.[96] Such "back time" credit is presently granted under the Penal Code to misdemeanants sentenced to county jail[97] and to felons sentenced to state prison.[98] These

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91. Cal. Stat's ch. 1070, p. 4508 (1976).

92. Staff News, *supra* note 82, at 2, col. 2.

93. Letter from C.A. Terhune, Deputy Director, California Department of Youth Authority, to All Youth Authority Wards, October 8, 1976 [hereinafter cited to as Letter to Wards.]

94. *Id.* at 1.

95. CAL. WELF. AND INST. CODE § 1771 (West 1972):

> Every person convicted of a felony and committed to the authority shall be discharged when such person reaches his 25th birthday [unless an order for further detention is made after a hearing finding ward to be a danger to the public under Sections 1780-83 or 1800-03].

96. Letter to Wards, *supra* note 93, at 2.

97. CAL. PENAL CODE § 2900.6 (West Supp. 1977) (effective 1972).

The *Olivas* court pointed out in several footnotes the fact that the 90 days presentence time served by the defendant would have been credited to reduce any county jail sentence imposed, thus comparatively resulting in an even greater sentence length for the defendant than the maximum county jail term. 17 Cal. 3d at 343-44 nn. 9 & 10, 551 P.2d at 378 nn. 9 & 10, 131 Cal. Rptr. at 58 nn. 9 & 10. *See* text, *supra* accompanying note 11. However, this appears to be only dicta because the specific holding of the case is limited to equalizing misdemeanor Youth Authority commitment terms with maximum county jail sentences without reference to "back time" credit. *See* text, *supra*, accompanying note 14.

98. CAL. PENAL CODE § 2900.5 (West Supp. 1977).

sections provide credit for all days served while the defendant is in custody from the date of arrest until the sentence commences. However, no comparable statute grants such "back time" credit to Youth Authority commitments and it has never before been granted by the Department. Moreover, as recently as 1975, in *In re Keel*,[99] a California court of appeal refused to construe Penal Code Section 2900.5[100] as applicable to felony commitments to the Youth Authority. The denial of "back time" credit to such commitments was held not to have even raised an equal protection issue for review.[101]

The *Keel* court's avoidance of the equal protection issue was, however, hardly justifiable when it is understood that felons committed to the Youth Authority and felons sent to state prisons are each sub-classes of the larger class of felons convicted in the adult courts, and that granting or denying the benefit of "back time" credit affects the personal liberty of each sub-class in an identical manner insofar as the reduction of the maximum sentence imposed is concerned. Thus, the two groups are not only sufficiently similarly situated to raise an equal protection question, but because the unequal treatment affects personal liberties the state should now have to demonstrate a compelling interest before denying the benefit to Youth Authority commitments. Since it is apparent that the denials are based on the state's interest in rehabilitation, "back time" credit would have undoubtedly been granted upon review by the California Supreme Court.

The *Olivas* court expressly reserved for a proper case the issue of the validity of juvenile court commitments to the Youth Authority[102] which extend beyond the maximum county jail sentence that could be imposed on an adult convicted of the

99. 53 Cal. App. 3d 70, 125 Cal. Rptr. 492 (1975).

100. CAL. PENAL CODE § 2900.5 (West Supp. 1977) (felony back time credit section, effective 1972).

101. 53 Cal. App. 3d at 77, 125 Cal. Rptr. at 496.
The *Keel* court based this holding on the lack of a "minimum parole eligibility date" for Youth Authority commitments as compared with the existence of such a date for felons sentenced to state prison. *Id.* at 73, 125 Cal. Rptr. at 494.

102. CAL. WELF. AND INST. CODE § 1736 (West 1972):
> The juvenile court may in its discretion commit persons subject to its jurisdiction to the Authority, and the Authority may in its discretion accept such commitments.

identical offense.[103] Consistent with this reservation, the Department of the Youth Authority to date has declined to extend the *Olivas* holding to include commitments from the juvenile courts. Welfare and Institutions Code Section 1769[104] provides that commitments from the juvenile courts shall be for a period of two years or until the youth reaches age 21, whichever occurs *later*. Thus, when a minor is adjudged to be "a ward of the court"[105] and is comitted to the Youth Authority for an offense that is punishable as a "pure" misdemeanor in adult court, he is deprived of his personal liberty, at the minimum, for twice as long as the maximum permissible county jail sentence.[106] It would appear, therefore, that this scheme raises the same equal protection issue as did the scheme in *Olivas*.

This issue remains despite the fact that comprehensive juvenile justice legislation,[107] passed subsequent to *Olivas* and effective January 1, 1977, included provisions[108] limiting the physical confinement of minors to adult maximums. An addition to Welfare and Institutions Code Section 731[109] provides that a minor who has been adjudged to be a ward of the juvenile court for having perpetrated a criminal offense and who has been committed to the Youth Authority shall not be incarcerated beyond the maximum term of imprisionment which could be imposed on an adult convicted of the same offense. The addition further provides,[110] however, that the Youth Authority may retain these wards on parole status for the maximum period specified by Section 1769.[111] As a consequence of the new law a ward may thus be incarcerated for the maximum period of the county jail term prescribed for that offense and thereafter released on parole to serve the remainder of his minimum

103. 17 Cal. 3d at 243 n. 11, 551 P.2d at 379 n. 11, 131 Cal. Rptr. at 59 n. 11.

104. CAL. WELF. AND INST. CODE § 1769 (West 1972):

> Every person committed to the authority by a juvenile court shall be discharged upon the expiration of a two-year period of control or when the person reaches his 21st birthday, whichever occurs later, unless an order for further detention has been made by the committing court pursuant to Article 6 (commencing with Section 1800).

105. CAL. WELF. AND INST. CODE § 602 (West Supp. 1977).

106. *See supra* note 8.

107. Cal. Stat's chs. 1068-1071, p. 4453 (1976).

108. *Id.*, ch. 1071 §§ 29, 30 at 4527-29.

109. *Id.* § 30 at 4529.

110. *Id.*

111. *See supra* note 104. Section 1769 was amended this same session by adding a provision extending Youth Authority jurisdiction over juvenile court commitments 16 years of age or older who commit certain serious felonies to their 23rd birthday or for two years, whichever occurs later. Cal. Stat's ch. 1071 § 34, p. 4530 (1976).

two year sentence.[112] As will be recalled,[113] the *Olivas* court included parole status within its definition of a deprivation of personal liberty.[114]

The recent legislation has not only left intact the issue of longer sentences for juvenile court commitments reserved by the *Olivas* decision[115] but it has also fallen short in its attempt to equalize juvenile incarceration periods with adult maximums when a minor is confined prior to the disposition of his case by the juvenile court. The legislation made no additions expressly granting "back time" credit[116] to minors and the Department of the Youth Authority has not construed the addition to Section 731 as requiring such credit for the purpose of reducing the maximum incarceration period. This has produced the possibility of a longer incarceration term for a minor who is confined prior to trial and to a disposition committing him to the Youth Authority than for an adult who is sentenced to imprisonment for the same offense but who is automatically granted presentence credit by statute.[117]

A second possible issue concerning juvenile court commitments also remains subject to challenge. This issue arose as a result of the Youth Authority's compliance with the Attorney

112. It is obvious that for the two year provision to apply the defendant must have reached his 19th birthday at the time of his commitment. The two year minimum is the exception rather than the rule considering that the average age at commitment during 1975 for a juvenile court ward was 16.2 years. STATE OF CALIFORNIA, DEPARTMENT OF THE YOUTH AUTHORITY, ANNUAL REPORT, PROGRAM DESCRIPTION AND STATISTICAL SUMMARY 1975 table 5, at 19 (1976). The rule is therefore commitment lengths substantially in excess of two years.

113. *See* text, *supra*, accompanying notes 44 and 45.

114. The standard parole conditions require, among other things, that a parolee follow all the instructions of his parole agent including participating in a selected education, employment or training program, refraining from changing his residence or leaving the state without the agent's consent, and submitting to any medical or psychiatric examinations as the Authority directs. STATE OF CALIFORNIA, DEPARTMENT OF THE YOUTH AUTHORITY, YOUTH AUTHORITY BOARD POLICY MANUAL Appendix F (1974). In addition to the standard conditions, "special conditions" may be ordered by the Youth Authority Board. *Id.* The consequence of violating a parole condition may result in a temporary detention for up to 30 days, *id.*, or even a return to a Youth Authority institution for the remainder of the parolee's commitment term. CAL. WELF. AND INST. CODE §§ 1177, 1767.3 (West 1972).

115. *See* text, *supra*, accompanying note 102.

116. For a discussion of "back time" credit *see* text, *supra*, accompanying notes 96-98.

117. CAL. PENAL CODE §§ 2900.5, 2900.6 (West Supp. 1977).

General's interpretation of the *Olivas* decision: the Authority has granted "back time" credit to adult court commitments to reduce their jurisdictional terms but has denied this credit to juvenile court commitments.[118]

Since the major justification for imposing longer sentences on juvenile court commitments for misdemeanor offenses[119] and for denying them "back time" credit obviously rests on the rehabilitation ideal, it is unnecessary to demonstrate that, based on the reasoning of *Olivas*, this unequal treatment will not withstand the strict scrutiny test. This prediction is sound even though the issues may raise threshold equal protection questions not present in *Olivas*. An argument might be made that juvenile court commitments are not similarly situated with adult misdemeanants because minors are tried in a different court and are not deemed to be convicted of public offenses. However, regardless of the procedural distinctions, both groups ultimately suffer similar deprivations of personal liberties[120] for having committed the same prohibited acts and, as in *Olivas*, one group will be forced to suffer a longer loss of liberty because of a classification based upon age. Thus, the two groups *are* similarly situated for equal protection purposes.[121]

A final and more general question to be briefly explored concerns the possible limitations, if any, which might be placed on the newly enunciated personal liberty approach. This approach has potentially broad application as a remedy for eradicating any inequities presently existing in California's penal sentencing scheme which are based on arbitrary criteria (such as age), whether they involve a class of youthful offenders, as in *Olivas*, or a class of adult offenders. For example, the approach seems applicable to the extreme situation of an adult who is convicted

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118. *See* text, *supra*, accompanying note 96.

119. Many Youth Authority commitments from the juvenile courts for felony offenses may also be serving longer sentences than adults sentenced to prison because the prison terms specified in the new "definite" sentencing law for less serious felonies are only 16 months, 2 or 3 years. Cal. Stat's ch. 1139 § 98, p. 4776 (1976) (operative July 1, 1977). Moreover, the Authority's plans to date for implementing the "definite" sentencing law in terms of computing jurisdictional dates for adult court commitments and incarceration periods for juvenile court commitments do not include granting "good time" credit, a procedure which was established in the new law to automatically reduce by one-third adult prison sentences for displaying "good behavior." *Id.* § 276, p. 4823.

120. Moreover, *identical* deprivations of liberty are suffered when a youth is committed to the Youth Authority from a criminal court as the defendant was in *Olivas*.

121. *See* Smith v. Sargent, 305 A.2d 273 (Me. 1973); In re K.V.N., 116 N.J. Super. 580, 283 A.2d 337 (1971); Smith v. State, 444 S.W. 2d 941 (Tex. Civ. App. 1969).

of kidnapping for ransom with injury to the victim[122] and receives the maximum sentence of life imprisonment without the possibility of parole.[123] In all cases this sentence is for a longer period than the maximum permissible sentence that can be imposed on a minor found guilty of the same offense in juvenile court.[124] Thus, it can be argued that all such adults suffer a greater deprivation of personal liberty than minors similarly situated solely because of their age. Even assuming that such an unequal sentencing scheme raises the same equal protection issue as was found in *Olivas*, the fundamental practical question becomes whether or not the California Supreme Court would be receptive to such a challenge. The stated rationale in *Olivas* offers no indication of any limitations on the new approach.[125] On the contrary, the rationale seems to imply that the court is in a posture to accept such a challenge for review and to apply this "modern" approach to any similar situation of sentencing inequality.[126] However, if there is any validity to the contention raised in this note[127] that the underlying rationale of *Olivas* was primarily based on the court's disillusionment with the implementation of the rehabilitation ideal, then it appears likely that restraints will be placed on the new approach making it available only to the general class of "youthful" offenders as a remedy for eliminating any sentencing inequalities existing in this area of the California criminal justice system.

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122. CAL. PENAL CODE § 209 (West 1970).
123. *Id.* Note that the new definite sentencing law does not change the sentence for this offense.
124. CAL. WELF. AND INST. CODE § 731, *as amended*, Cal. Stat's 1071 § 30, p. 4529 (1976) (commitment to the Youth Authority is the most severe sentence).
125. *See* text, *supra*, accompanying notes 36-38.
126. *Id.*
127. *See* text, *supra*, accompanying notes 78-81.