

SUPREME COURT OF WASHINGTON

Willoughby v. Department of Labor & Industries

147 Wn. 2d 725 (2002) · Decided November 14, 2002

OPINION

SANDERS, J.

Sanders, J. — Tony Willoughby and Lennie Cain challenge the validity of RCW 51.32.040(3)(a) and 72.60.102's bar against disbursing industrial insurance permanent partial disability benefits to prisoners who have no statutory beneficiaries and are unlikely to be released from prison. Judge Schacht of the Walla Walla County Superior Court found these statutes worked a forfeiture of the prisoners' property contrary to RCW 9.92.110, violated their right to equal protection of the law, and deprived them of their property without due process of law.

The Washington State Department of Labor and Industries (Labor & Industries) appealed. We granted direct review and affirm. FACTS Tony Willoughby is incarcerated at the state penitentiary in Walla Walla for life without the possibility of parole. He is unmarried and has no dependents. At the time of his injury Willoughby was employed in a correctional work program to which the State's industrial insurance applied.

On November 14, 1994, Willoughby *729suffered a job-related injury, requiring the amputation of two-thirds of his right index finger. Willoughby filed a timely claim with Labor & Industries, which rated his injuries and determined he should receive \$10,260.81 in permanent partial disability benefits.

However, because he was incarcerated and had no spouse or dependents, Labor & Industries canceled his benefits pursuant to RCW 51.32.040(3)(a) and 72.60.102. In June 1996, Willoughby, acting pro se, filed a declaratory judgment action in Walla Walla County Superior Court, challenging the validity of RCW 51.32.040(3)(a) and 72.60.102 on several grounds, alleging violations of due process and equal protection, and claiming that RCW 51.32.040(3)(a) and 72.60.102 conflicted with RCW 9.92-.110, which prohibits forfeiture of a prisoner's property by reason of his or her conviction.¹ Lennie Cain, born in 1964, is serving a 60-year sentence at the state penitentiary in Walla Walla.² Cain has no spouse or dependents.

Like Willoughby, Cain also was employed in a correctional work program, to which the State's industrial insurance applied. On March 17, 1997, Cain suffered a job-related injury, incurring the loss of three fingers of his right hand. Cain timely filed a claim with Labor & Industries. Noting that Cain was incarcerated and had no spouse or dependents, Labor & Industries closed Cain's claim without first determining his permanent partial disability rating.

In May 1998, Cain, pro se, filed a declaratory judgment action with the Walla Walla County Superior Court challenging the validity of RCW 51.32.040(3)(a) and 72.60.102 on the same grounds raised by Willoughby. Concluding the legislative classification of RCW 51.32.040(3)(a), applicable to Willoughby and Cain by virtue of RCW 72.60.102, rests on grounds wholly irrelevant to achievement of any legitimate state objective and finding no conceivable set of facts that could provide a rational basis for the classification created by these statutory provisions, the trial court held the statutes violated constitutional equal protection and due process guaranties.

It also concluded RCW 51.32.040 (3)(a) and 72.60.102 conflicted with RCW 9.92.110 because they forfeit a prisoner's property. *Willoughby v. Dep't of Labor & Indus.*, No. 96-2-00344-2, Findings of Fact and Conclusions of Law (Walla Walla County Super. Ct. July 25, 2000); *Cain v. Dep't of Labor & Indus.*, No. 98-2-00240-0, Findings of Fact and Conclusions of Law (Walla Walla County Super.

Ct. July 25, 2000). On August 22, 2000, Labor & Industries appealed to the Court of Appeals, and the Willoughby and Cain matters, 19525-2-III and 19526-1-III, were consolidated on motion by the State. On March 1, 2001, the Court of Appeals stayed the superior court judgment and thereafter, on January 16, 2002, certified the consolidated appeals for direct review by this court.

We accepted review pursuant to RCW 2.06.030(c). **STANDARD OF REVIEW** The construction of a statute is a question of law and is reviewed de novo. *Stuckey v. Dep't of Labor & Indus.*, 129 Wn.2d 289, 295, 916 P.2d 399 (1996). Constitutional challenges are reviewed de novo. *Fusato v. Wash. Interscholastic Activities Ass'n*, 93 Wn. App. 762, 767, 970 P.2d 774 (1999).

ANALYSIS I. Forfeiture If an issue can be resolved on statutory grounds, the court need not reach constitutional issues. *Tunstall ex rel. Tunstall v. Bergeson*, 141 Wn.2d 201, 210, 5 P.3d 691 (2000), cert. denied, 532 U.S. 920 (2001).

However, this claim that denial of a prisoner's permanent partial disability benefits pursuant to RCW 51.32.040(3)(a) and 72.60.102 violates RCW 9.92.110 (barring forfeiture of a prisoner's property by reason of his or her conviction) cannot succeed. "[I]t is the duty of the court to reconcile apparently conflicting statutes and to give effect to each of them, if this can be achieved without distortion of the language used." *Tommy P. v. Bd. of County Comm'rs*, 97 Wn.2d 385, 391-92, 645 P.2d 697 (1982).

RCW 72.60.102 states in relevant part: [A]ny inmate employed in classes I, II, and IV of correctional industries as defined in RCW 72.09.100 is eligible for industrial insurance benefits as provided by Title 51 RCW.

However, eligibility for benefits for either the inmate or the inmate's dependents or beneficiaries for temporary disability or permanent total disability as provided in RCW 51.32.090 or 51.32.060, respectively, shall not take effect until the inmate is released pursuant to an order of parole by the

indeterminate sentence review board, or discharged from custody upon expiration of the sentence, or discharged from custody by order of a court of appropriate jurisdiction.

RCW 51.32.040(3) states in relevant part: (a) Any worker or beneficiary receiving benefits under this title who is subsequently confined in, or who subsequently becomes eligible for benefits under this title while confined in, any institution under conviction and sentence shall have all payments of the compensation canceled during the period of confinement.

After discharge from the institution, payment of benefits due afterward shall be paid if the worker or beneficiary would, except for the provisions of this subsection (3), otherwise be entitled to them. (c) If the confined worker has any beneficiaries during the confinement period during which benefits are canceled under (a) or (b) of this subsection, they shall be paid directly the *732monthly benefits which would have been paid to the worker for himself or herself and the worker's beneficiaries[3] had the worker not been confined.[4] According to these statutes, Labor & Industries is required to suspend payment of prisoners' permanent partial disability benefits for the duration of their imprisonment.

RCW 9.92.110 provides: [a] conviction of crime shall not work a forfeiture of any property, real or personal, or of any right or interest therein. Labor & Industries correctly argues there is no conflict between statutes because RCW 51.32.040(3)(a) suspends payment of benefits where a worker is confined pursuant to a conviction, not because the worker is convicted.

Similarly, RCW 72.60.102 lifts the suspension upon discharge at the expiration of the sentence, pursuant to an order of parole or by order of a court of appropriate jurisdiction. Thus, the statutes do not penalize Willoughby and Cain by reason of their conviction and do not conflict with RCW 9.92.110. II. Due Process A claimant alleging deprivation of due process must first establish a legitimate claim of entitlement to the life, liberty or property at issue.

Meyer v. Univ. of Wash., 105 Wn.2d 847, 853, 719 P.2d 98 (1986). Legitimate claims of entitlement generally entail vested liberty or property rights. In re Marriage of MacDonald, 104 Wn.2d 745, 748, 709 P.2d 1196 (1985). *733“A vested right, entitled to protection from legislation, must be something more than a mere expectation based upon an anticipated continuance of the existing law; it must have become a title, legal or equitable, to the present or future enjoyment of property, a demand, or a legal exemption from a demand by another.” Harris v. Dep't of Labor & Indus., 120 Wn.2d 461, 475, 843 P.2d 1056 (1993) (quoting Godfrey v. State, 84 Wn.2d 959, 963, 530 P.2d 630 (1975)).

By its text RCW 51.32.080 mandates payment of permanent partial disability benefits upon determination of an industrial injury. RCW 51.32.080(l)(a); see also Harris, 120 Wn.2d at 475 (right to disability benefits does not vest until determination of an industrial injury). All workers who suffer an industrial injury covered by the Industrial Insurance Act, Title 51 RCW, have a

vested interest in disability payments upon determination of an industrial injury.⁵ Furthermore, Labor & Industries has a statutory duty to conduct an investigation pursuant to an injury claim and to determine whether the worker has suffered a compensable industrial injury.

RCW 51.32.055. We recognize both Willoughby, for whom Labor & Industries has made a determination, and Cain, for whom it failed to perform its duty, have a vested interest in these benefits.⁶ Whether a statute deprives one of life, liberty or property without due process depends on “ ‘(1) whether the [statute] is aimed at achieving a legitimate public purpose; (2) whether it uses means that are reasonably necessary to achieve that purpose; and (3) whether it is unduly oppressive.’ ” *Sintra, Inc. v. City of Seattle*, 119 Wn.2d 1, 21, 829 P.2d 765 (1992) (quoting *Presbytery of Seattle v. King County*, 114 Wn.2d 320, 330, 787 P.2d 907 (1990)); *Orion Corp. v. State*, 109 Wn.2d 621, 646-47, 747 P.2d 1062 (1987); *734 *Lawton v. Steele*, 152 U.S. 133, 14 S. Ct.

499, 38 L. Ed. 385 (1894). Labor & Industries alleges the challenged statutes’ prohibition against paying benefits to incarcerated workers without statutory beneficiaries promotes several public purposes: 1. it accords with the act’s purpose of shifting responsibility to the employers where the state already provides inmates’ necessities; 2. withholding lump sum payments is consistent with maintaining prison discipline; 3. not paying prisoners saves the state money; and 4. withholding benefits reduces fraudulent claims.

Br. of Appellant at 34, 17-26. We must test each of the State’s proffered grounds against due process criteria. A. The purpose of the compensation scheme is to shift responsibility for providing workers’ necessities onto employers and industry rather than society at large. Labor & Industries contends the statutory bar against distributing permanent partial disability benefits to imprisoned workers accords with the legitimate public purpose of limiting benefits to workers who form a part of the competitive market and require compensation for lost wage earnings.

Br. of Appellant at 34, 17, 22. Because prisoners do not form a part of the competitive market and the State already provides them with the necessities of life, Labor & Industries argues there is no need to compensate prisoners for permanent partial disabilities. *Id.* at 18.

Because the Industrial Insurance Act’s burden shifting scheme serves a legitimate public purpose, see generally *State v. Clausen*, 65 Wash. 156, 195-96, 117 P. 1101 (1911), it meets the first prong of the *Presbytery* test.

However, it may still fail the second prong, which requires the State to use only means reasonably necessary to achieve that purpose. Labor & Industries’ argument assumes the purpose of permanent partial disability awards is to compensate for *735 loss of earnings. Br. of Appellant at 17-18. This assumption is inconsistent with *McIndoe v. Department of Labor & Industries*, 144 Wn.2d 252, 26 P.3d 903 (2001).

McIndoe questioned “whether a worker who is classified as permanently totally disabled and placed on pension may thereafter receive a permanent partial disability award for an unrelated occupational injury which developed prior to the pension award.” 144 Wn.2d at 256. Labor & Industries there argued that allowing a permanent partial disability award after the claimant had been awarded a permanent total disability pension would constitute double recovery because both types of benefits compensate for presumed loss of wage-earning ability and the permanent total disability pension already fully compensates a worker for wage loss caused by occupational disability.

McIndoe, 144 Wn.2d at 260. The workers disagreed, arguing the sole purpose of permanent partial disability awards is to compensate loss of bodily function. *Id.* We held: The Department’s reasoning that both permanent partial disability and permanent total disability benefits are compensation for wage loss does not accord with RCW 51.32.060(4), because RCW 51.32.060(4) allows the receipt of both types of benefits.

To accept the Department’s argument, we would have to ignore RCW 51.32.060(4). *Id.* at 264. Here Labor & Industries argues because McIndoe did not expressly adopt the workers’ premise that the sole purpose of permanent partial disability awards is to compensate for loss of bodily function, it implicitly held wage compensation is one of the purposes of these awards.

Br. of Reply to Willoughby at 10-11. We disagree. As noted in McIndoe, the wage loss rationale is inconsistent with the principle that an injury may be fully compensable, while having no effect at all on the worker’s wage-earning capacity. *Id.* at 261 (“[L]oss of one testicle had no effect on worker’s ability to perform manual labor; claim for a permanent partial disability award allowed because ‘[o]ne has a right to remain in possession of all those useful members of his body which are provided by *736nature.’ ” (quoting *Kostida v. Dep’t of Labor & Indus.*, 139 Wash. 629, 634, 247 P. 1014 (1926))).

Additionally, the statutory scheme for permanent partial disability awards does not even take into account actual wage earning power because two individuals who have the same loss of function are entitled to the same permanent partial disability award. While the loss of a finger, for example, might have little disabling effect on a stevedore, it would be devastating to the earning ability of a pianist.

Thus, a permanent partial disability award is not specifically tied to wage earning ability. *Id.* at 262 (emphasis added) (citations omitted). Further, it is error to even consider loss of earning power when fixing an award for permanent partial disability. McIndoe, 144 Wn.2d at 261 (citing *Cayce v. Dep’t of Labor & Indus.*, 2 Wn. App. 315, 317, 467 P.2d 879 (1970)).

Finally, Labor & Industries’ own regulation, WAC 296--20-01002, contradicts its position: Permanent partial disability:.... Under Washington law disability awards are based solely on

physical or mental impairment due to the accepted injury or conditions without consideration of economic factors.

We reject the burden-shifting argument because it is unrelated to the general nature of permanent partial disability benefits. B. Labor & Industries argues withholding benefits to prisoners preserves prison discipline. Labor & Industries argues the statutory bar on payment of permanent partial disability benefits to inmates avoids discipline problems occasioned by large cash payments to prisoners.

Br. of Appellant at 24. Although maintaining prison discipline serves a legitimate public interest, see, e.g., *In re Personal Restraint of Dyer*, 143 Wn.2d 384, 396, 20 P.3d 907 (2001) (granting prison administrators broad discretion in matters pertaining to internal prison discipline), merely asserting a legitimate objective does not end *737the inquiry; the means must still reasonably advance the objective and not be unduly oppressive.

Logically the statutory bar against prisoners receiving permanent partial disability awards while imprisoned would affect prison discipline only if the benefits were actually provided as cash payments readily available to the inmates for individual use. But permanent partial disability benefits are provided on a monthly basis, not as a lump sum. RCW 51.32.080(6).

Moreover, as Labor & Industries concedes, payments are not automatically available to inmates for their discretionary use absent action by the secretary of the Department of Corrections.⁷ Resp. to Br. of Amicus Curiae at 10. C. Labor & Industries maintains withholding benefits to prisoners preserves state resources. Labor & Industries argues its denial of benefits to prisoners is justified to preserve state resources because the State already provides prisoners with their basic needs.

Br. of Appellant at 25-26. However, as noted, the purpose of permanent partial disability benefits is to compensate injured workers for the loss of bodily functions, not to provide for their basic needs. Moreover, saving money is not a sufficient ground for upholding an otherwise unconstitutional statute in any event. See, e.g., *Harris*, 120 Wn.2d at 481 n.12 (cited by Department of Labor & Industries, Br. of Appellant at 17) (noting that even “where finite state resources are involved, a statutory discrimination ‘will not be set aside’ ” unless there is an independent rational basis *738to justify it) (quoting *Caughey v. Employment Sec. Dep’t*, 81 Wn.2d 597, 599, 503 P.2d 460 (1972)); see also *Plyler v. Doe*, 457 U.S. 202, 227, 102 S. Ct.

2382, 72 L. Ed. 2d 786 (1982) (“Of course, a concern for the preservation of resources standing alone can hardly justify the classification used in allocating those resources.”). D. Labor & Industries maintains withholding benefits to prisoners prevents fraudulent claims by members of the prison population.

Finally, Labor & Industries asserts prisoners are criminals and thus more likely to abuse the industrial insurance plan by filing false claims, intentionally injuring themselves, or coercing

fellow inmates to do the same. Br. of Appellant at 26-28.

In *Nicholas v. Riley*, 874 F. Supp. 10 (D.D.C.), aff'd, 1995 U.S. App. LEXIS 32542, 1995 WL 686227 (D.C. Cir. 1995), the court denied the claimant's equal protection challenge to a statutory provision of the Higher Education Act of 1965 (20 U.S.C. § 1070a(b)(8)) that barred the award of Pell Grants to federal or state prisoners. Br. of Appellant at 11. This case is distinguishable because the court relied on legislative history articulating the desire to eliminate fraud in the administration of Pell Grant moneys to prisoners.

Id. at 13. Here the legislature could not have so intended because prisoners continue to be eligible for benefits under the Industrial Insurance Act and the State is not spared the expense of processing industrial injury claims by inmates and investigating fraudulent claims or self-inflicted injuries. RCW 51.32.020 (barring payment where a worker's injuries are self inflicted).

We therefore affirm the superior court's decision that RCW 51.32.040(3)(a), as applied to Willoughby and Cain by RCW 72.60.102, deprives them of property absent that lawful process which is due. III. Equal Protection Finally, we consider whether the classification scheme created by RCW 51.32.040(3)(a) and 72.60.102 *739violates the prisoners' right to equal protection of the laws.⁸ "The first step in conducting any equal protection analysis is determining the appropriate standard of review." *Tunstall ex rel.*

Tunstall v. Bergeson, 141 Wn.2d 201, 225, 5 P.3d 691 (2000) (citing *Foley v. Dep't of Fisheries*, 119 Wn.2d 783, 789, 837 P.2d 14 (1992)). Where, as here, finite state resources are involved, the court applies a rational basis test. *Caughey*, 81 Wn.2d at 599. Rational basis tests whether (1) all members of the class created within the statute are treated alike, (2) reasonable grounds exist to justify the exclusion of parties who are not within the class, and (3) the classification created by the statute bears a rational relationship to the legitimate purpose of the statute.

DeYoung v. Providence Med. Ctr., 136 Wn.2d 136, 144, 960 P.2d 919 (1998). A. Whether members of the class are treated alike. Preliminarily Labor & Industries contests the superior court's designation of the affected class. Br. of Appellant at 13.

The superior court held RCW 51.32.040(3)(a) creates two classes of prisoners: "(A) those who are likely to either be released from prison during their lifetimes or to have beneficiaries during their imprisonment; and (B) those who [are] not likely to either be released from prison or to have beneficiaries during their lifetimes." Clerk's Papers at 27-28. Labor & Industries contends the superior court should have defined the classes as (A) incarcerated workers and (B) workers who are not incarcerated.

Br. of Appellant at 13. Strictly speaking, a statute creates only one relevant class, whereby differential treatment creates subgroups within the general class. See, e.g., *DeYoung*, 136 Wn.2d at 144-45. The general class underlying the superior court's *740designation is the class of

prisoners who are covered by the State's industrial insurance. Within that class the statute treats prisoners differently depending on whether they are likely either to be released or have beneficiaries during their lifetime.

The general class underlying Labor & Industries' competing designation is the class of workers covered by the State's industrial insurance. But within that class the difference in treatment depends on whether the worker is currently incarcerated.

As Labor & Industries acknowledges, the prisoners' benefits were suspended because they are unlikely to be released in their lifetimes and have no beneficiaries, not because they are prisoners. Br. of Appellant at 37-38.

Thus, the distinction drawn by the superior court, rather than the one advanced by Labor & Industries, more accurately describes the relevant class. But Labor & Industries then argues even if this court accepts the superior court's class designations, the statute still treats all members of this class equally because no prisoner receives benefits while incarcerated.

Br. of Appellant at 28. However, Labor & Industries again ignores the relevant distinctions created by RCW 51.32.040(3)(a) and 72.60.102. These distinctions confer special advantages to some members of the group without making them equally available to all.

The transfer of benefits is one such advantage. The law recognizes that an advantage may be conferred to an individual where a third party is benefited. See, e.g., *Culinary Workers & Bartenders Union, Local No. 596 v. Gateway Cafe, Inc.*, 91 Wn.2d 353, 368, 588 P.2d 1334, 642 P.2d 403 (1979) (promise to perform obligations for the benefit of third parties constitutes valid consideration to support a contract).

By allowing a transfer of benefits to a statutorily defined beneficiary the statute confers an advantage to prisoners with spouses, children or dependents not equally available to prisoners without these statutory beneficiaries. *741 Additionally, the statutes confer the benefit of an assured interest in the award upon release to prisoners who anticipate release during their lifetimes.

Because the advantage of transferring or postponing benefits is not equally available to all members of the class of prisoners covered by the industrial insurance plan, Labor & Industries has not met the first prong of the rational basis test.⁹ B. Whether there are reasonable grounds to uphold this distinction based on a legitimate public interest. Labor & Industries raises the same grounds to justify unequal treatment of members of the class of imprisoned workers who qualify for permanent partial disability benefits it raised in context of the prisoners' due process claim.

Br. of Appellant at 17-26. For many of the same reasons articulated above we hold these grounds fail to provide a rational basis for the statutory distinction between prisoners who either have a

beneficiary or are likely to be released during their lifetimes and all others. Permanent partial disability benefits are unrelated to wage compensation.

The fact that the State already provides for the prisoners' basic needs is irrelevant to Labor & Industries' statutory obligation to compensate prisoners for their industrial injuries. Moreover, preservation of state funds is not in itself a sufficient ground to defeat an equal protection challenge.

Thus, we reject the wage compensation, burden shifting, and cost saving arguments. Br. of Appellant at 17, 22, and 25. *742 Permanent partial disability benefits are paid on a monthly basis, not as a lump sum and prisoners have very limited access to their own money.

Thus, we also reject the prison discipline rationale. Id. at 24. Finally, we reject the fraud prevention rationale. Id. at 26-28. Labor & Industries asserts all prisoners are more likely to commit fraud or intentionally injure themselves. Br. of Appellant at 26. But even assuming if so, the fraud rationale still does not account for the challenged distinction between inmates unlikely to be released and without beneficiaries and all others.

We therefore hold RCW 51.32.040(3)(a), as applied to prisoners by 72.60.102, violates equal protection. CONCLUSION The trial court is affirmed. The cases are remanded for proceedings consistent with this opinion. The prisoners shall recover their costs on appeal. Alexander, C.J., and Smith, Johnson, and Chambers, JJ., concur.

The superior court denied Willoughby's and Cain's claimed violations of the ex post facto clause of the federal constitution, the Eighth Amendment prohibition against cruel and unusual punishment, and state and federal constitutional prohibitions against retrospective legislation. Willoughby Clerk's Papers (CP) at 29-30 (Willoughby v. Dep't of Labor & Indus., No. 96-2-00344-2 (Findings of Fact and Conclusions of Law, Walla Walla County Super.

Ct. July 25, 2000)); Cain CP at 41-44 (Cain v. Dep't of Labor & Indus., No. 98-2-00240-0 (Findings of Fact and Conclusions of Law, Walla Walla County Super. Ct. July 25, 2000)). The record does not indicate when Cain was sentenced.

However, the State concedes that he is unlikely to be released during his lifetime. Br. of Appellant at 7. Washington's Industrial Insurance Act, Title 51 RCW, defines "beneficiary" as "a husband, wife, child, or dependent of a worker...." RCW 51.08.020. A "dependent" is defined as "any of the following named relatives of a worker whose death results from any injury and who leaves surviving no widow, widower, or child, viz: Father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, brother, sister, half-sister, half-brother, niece, nephew, who at the time of the accident are actually and necessarily dependent in whole or in part for their support upon the earnings of the worker." RCW 51.08.050.

See also RCW 51.32.040(4): “Any lump sum benefits to which a worker would otherwise be entitled but for the provisions of this section shall be paid on a monthly basis to his or her beneficiaries.” This provision further underscores the right of transfer granted to prisoners with beneficiaries. A finding of a compensable injury includes a determination that the injury was not self-inflicted.

See RCW 51.32.020. We also note Labor & Industries does not contest the superior court’s factual conclusion that Cain sustained a compensable industrial injury. Br. of Appellant at 8; Resp. to Br. of Amicus Curiae at 10-11. Unchallenged facts are verities on appeal. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). RCW 72.11.020 provides in pertinent part: The secretary shall be custodian of all funds of a convicted person that are in his or her possession upon admission to a state institution, or that are sent or brought to the person, or earned by the person while in custody, or that are forwarded to the superintendent on behalf of a convicted person.

All such funds shall be deposited in the personal account of the convicted person within the institutional resident deposit account.... Additionally, a prisoner’s individual funds are subject to statutory deductions, such as a mandatory contribution to the inmate’s cost of incarceration, established in RCW 72.09.111(l)(a). RCW 72.09.480. Consistent with this policy of limiting prisoners’ access to money while imprisoned, the Department of Corrections treats currency, personal checks, and money orders as contraband.

WAC 137-36--040(l)(c). The superior court concluded RCW 51.32.040(3)(a) and 72.60.102 violated both state and federal equal protection guaranties. *Willoughby* CP at 28; *Cain* CP at 42. Because *Willoughby* and *Cain* argue violations of equal protection, as opposed to undue favoritism, our state equal protection review is subsumed under the federal equal protection analysis.

See, e.g., *Clark v. Pacificorp*, 118 Wn.2d 167, 192 n.13, 822 P.2d 162 (1991), superseded by statute on other grounds as stated in *Gilbert H. Moen Co. v. Island Steel Erectors, Inc.*, 128 Wn.2d 745, 912 P.2d 472 (1996). It is worth noting at the time the statutory bar was enacted in 1965, the highest noncapital penalty was life imprisonment with the possibility of parole.

The parole board had authority to release all prisoners, including those serving a mandatory life sentence after they had served 20 consecutive years. See former ROW 9.95.115 (1951). It was not until 1981 with the enactment of the Sentencing Reform Act of 1981, chapter 9.94A RCW, that it was possible to receive a sentence of life imprisonment without the possibility of parole.

One of the effects of the drastically increased penalties was to transform the statutory bar from a limitation on a right to an absolute denial of a right for prisoners like *Willoughby* and *Cain*.

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