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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL TREJO,

Defendant and Appellant.

B271528

(Los Angeles County
Super. Ct. No. BA420112)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Frederick N. Wapner, Judge. Affirmed.

Susan Morrow Maxwell, under appointment by the Court of
Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief
Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Paul M. Roadarmel, Jr., and Daniel C. Chang,
Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Manuel Trejo pleaded guilty to, among other things, second degree robbery. He was sentenced as a second striker. On appeal, Trejo contends that the trial court misunderstood the scope of its discretion when denying his *Romero*¹ motion. We disagree, and therefore we affirm the judgment.

BACKGROUND²

Ana Cisneros worked at the Family Dollar Store. At approximately 6:15 p.m. on December 15, 2013, Trejo, wearing a scarf over his mouth and nose, was in the store. It being cold outside, Cisneros initially thought nothing of Trejo's attire. But, as Cisneros walked toward the cash registers, Trejo told Cisneros to "listen." He showed Cisneros something wrapped in a black stocking. Although Cisneros could see only a metal handle, it appeared to be a gun. Another witness, however, saw Trejo lift his shirt to reveal a gun. Trejo took \$108 from a cash register. When Cisneros told Trejo she could not open another cash register without the code, he "backed away." Trejo took a handful of beef jerky before leaving.

Almost two hours later, Deputy Sheriff Eva Robles saw Trejo driving a car that had been connected to a domestic violence investigation. Robles activated her car's lights and sirens, but Trejo did not yield. Instead, Trejo's car continued through intersections and stop signs at approximately 40 miles per hour. Trejo's car crashed into a parked vehicle, but he

¹ *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

² The facts underlying Trejo's crimes are from the preliminary hearing.

continued on, eventually stopping. Robles found Jack Link's beef sticks in Trejo's car.

Based on these events, an information was filed alleging that Trejo committed count 1, second degree robbery (Pen. Code, § 211)³ with a gun (§ 12022.53, subd. (b)), and count 2, evading an officer, willful disregard (Veh. Code, § 2800.2, subd. (a)). The information alleged that Trejo had two prior second degree robbery convictions, the first from 1996 and the second from 2005, within the meaning of the "Three Strikes" law; three prior prison terms (§ 667.5, subd. (b)); and two prior convictions of a serious felony (§ 667, subd. (a)(1)). On May 19, 2015, defendant pleaded guilty to the charges and admitted the allegations, including that he was convicted of two prior strikes.

At the April 11, 2016 sentencing hearing, defense counsel asked the trial court to strike one or both priors. Counsel argued that Trejo had been doing "really swell on parole from January through December" 2013, but Christmas was coming, "money was short" and Trejo "fell back and hit the pipe and in one night blew it."⁴

The trial court noted that Trejo seemed like a "decent enough guy" and had done exceptionally well on parole. The court said it "would like to do something for him, but I have to follow the law which says that I have to look at the nature and circumstances of the present offense, the nature and circumstances of the strikes, and his background, character, and

³ All further undesignated statutory references are to the Penal Code.

⁴ When Trejo was arrested on these current charges, he had a methamphetamine pipe.

prospects and make a determination as to whether he falls partially or wholly outside the scope of the Three-Strikes law. [¶] And I don't think he does." The court noted that although the age of the first strike (20 years) mitigated in favor of striking it, the circumstances of it (a codefendant's use of a gun, a shootout and a wounded victim) mitigated against striking it. During the second robbery, Trejo wore a mask and simulated using a gun, which caused the victim to stab Trejo. The court observed that "these are the kinds of things that happen when people walk around with masks and simulating guns." Trejo went to prison for that robbery, and, within 10 and a half months of his release, he committed the current crimes. The court acknowledged that Trejo had a history of mental illness and although medication controlled it, "no doubt, that was a contributing factor to when things went south." "The problem is that his M.O. for dealing with things when things don't work out is to get a mask and a gun and people can get really, really hurt. [¶] And so I cannot, with a straight face, say that he falls even partially outside the scope of the Three-Strikes law." The court said it could not take its personal "view of what might be enough and substitute it for my judgment about whether he falls" outside the scope of the Three Strikes law.

The trial court therefore sentenced Trejo, on count 1, to 25 years to life plus 10 years for the gun enhancement (§ 12022.53, subd. (b)) plus two 5-year terms (§ 667, subd. (a)(1)). On count 2, the court sentenced Trejo to a consecutive term of eight months doubled to 16 months. The court, however, struck a one-year

prior and stayed two 1-year priors (§ 667.5, subd. (b)). Trejo's total sentence was 46 years four months.⁵

DISCUSSION

Trejo contends that the trial court erred in believing its discretion was limited to factors in *People v. Williams* (1998) 17 Cal.4th 148 and “by not understanding” it could consider Trejo’s “overall sentence” when ruling on the *Romero* motion. We disagree that the court misunderstood the scope of its discretion.

In the furtherance of justice, a trial court may strike or dismiss a prior conviction allegation. (§ 1385, subd. (a); *Romero*, *supra*, 13 Cal.4th at p. 504.) We review a court’s ruling on a *Romero* motion under the deferential abuse of discretion standard; that is, the defendant must show that the sentencing decision was irrational or arbitrary. (*People v. Carmony* (2004) 33 Cal.4th 367, 375, 378.) It is not enough to show that reasonable people might disagree about whether to strike a prior conviction. (*Id.* at p. 378.) The Three Strikes law “not only establishes a sentencing norm, it carefully circumscribes the trial court’s power to depart from this norm [T]he law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper.” (*Ibid.*) Only extraordinary circumstances justify finding that a career criminal

⁵ At the end of the sentencing hearing, defense counsel asked for clarification of the sentence on count 2. The court clarified that it was striking one of “the strikes as to count 2 only.” After the hearing, the court issued an order nunc pro tunc “to reflect that count 2 is not a serious or violent felony and therefore the defendant cannot be sentenced to a third strike sentence as to that count. Accordingly, the order striking the strike as to count 2 is vacated. Both parties have been reached and have agreed.”

is outside the Three Strikes law. (*Ibid.*) Therefore, “the circumstances where no reasonable people could disagree that the criminal falls outside the spirit of the three strikes scheme must be even more extraordinary.” (*Ibid.*)

When considering whether to strike prior conviction allegations, the factors a court considers are “whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme’s spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.” (*People v. Williams, supra*, 17 Cal.4th at p. 161.) A court also has the discretion to dismiss a prior conviction allegation with respect to fewer than all counts. (*People v. Johnson* (2015) 61 Cal.4th 674, 689; *People v. Garcia* (1999) 20 Cal.4th 490.) Where the record affirmatively discloses that the sentencing court misunderstood the scope of its discretion, remand is required. (*People v. Fuhrman* (1997) 16 Cal.4th 930, 944.)

No such misunderstanding affirmatively appears on this record. Instead, in an attempt to show that the trial court did not understand it could consider Trejo’s “overall sentence,” Trejo isolates comments the court made. The court said, for example, that it wanted “to do something” for Trejo and suggested that a sentence of “32 years and four months at 85 percent” would be “probably enough.” But when these comments are considered in the context of the entire sentencing hearing, it is clear the court properly understood the scope of its discretion. The court, for example, also said that “my *view* of what might be enough” was not a substitute for “my *judgment* about whether he falls” outside

the Three Strikes law. (*Italics added.*) Thus, placing all comments in context shows that the court was merely expressing sympathy for Trejo. However, we decline to equate that expression of sympathy with a misunderstanding of the scope of the court's discretion. To the contrary, the court's recognition it should not be guided by personal sentiment shows a perfect understanding of the scope of its discretion. (See, e.g., *Romero, supra*, 13 Cal.4th at p. 531 [court may not strike sentencing allegation based solely on personal antipathy for effect the Three Strikes law would have on a defendant while ignoring *Williams* factors].)

The trial court showed that it understood the scope of its discretion when it explained why it was finding Trejo outside the scope of the Three Strikes law: Trejo's first robbery involved the use of a gun and injury to a victim, and he simulated the use of a gun during his second robbery, which caused the victim to use a knife to defend himself. Trejo committed the current offense about 10 and a half months after release from prison on the second strike. During the current robbery, Trejo used a gun. Thus, Trejo's modus operandi "for dealing with things when things don't work out is to get a mask and a gun," which can lead to people getting "really, really hurt." Hence, the court found him to be a career criminal within the scope of the Three Strikes law.

DISPOSITION

The judgment is affirmed.

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BACHNER, J.*

We concur:

EDMON, P. J.

LAVIN, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.