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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. RAYMOND DEWAYNE FINLEY, Defendant and Appellant.	2d Crim. No. B230110 (Super. Ct. No. BA359832) (Los Angeles County)

Raymond Dewayne Finley appeals from the judgment following his conviction by jury of felony evasion of a peace officer (Veh. Code, § 2800.2, subd. (a)), and misdemeanor driving under the influence of alcohol or drugs (§ 23152, subd. (a)).[1] The jury acquitted him of assault with a deadly weapon on a peace officer (Pen. Code, § 245, subd. (c)). In a bifurcated proceeding, the trial court found true allegations that appellant had been convicted of two prior serious or violent felonies within the meaning of the three strikes law (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). The court sentenced him to 25 years to life in state prison. Appellant challenges the sufficiency of the evidence to support the

[1] All statutory references are to the Vehicle Code unless otherwise stated.

felony officer evasion, and contends that the court committed prejudicial errors in failing to instruct the jury sua sponte on the lesser offense of misdemeanor officer evasion, and instructing on flight evidence as consciousness of guilt. He further contends that the court abused its discretion by denying his motion to strike his prior felony convictions pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, and that his 25-year-to-life sentence constitutes cruel and unusual punishment. We affirm.

BACKGROUND

Prosecution Evidence

In 2009, Los Angeles County Sheriff Department Deputy Daryl Gaunt, worked as a canine handler. On August 1, 2009, at about 12:35 a.m., Gaunt was driving home, in uniform, in a marked Los Angeles County Sheriff black and white Chevrolet Tahoe (SUV). The SUV was fully outfitted, with sheriff's insignia, logos and emergency lights and sirens.

While stopped at a red light, Gaunt heard what sounded like cars colliding, accompanied by the squeal of tires followed by another crash. He immediately saw a sedan, later determined to be a Cadillac driven by appellant, run a stop sign as it turned from Hillview Avenue onto Riggin Avenue. It was travelling at high speed, in a "reckless and dangerous" manner. Two cars travelling eastbound on Riggin moved to the curb to avoid a collision.

Gaunt turned east on Riggin in pursuit of the Cadillac. It passed another stop sign without stopping, accelerated to an extremely high speed and continued out of Gaunt's sight. The pursuit occurred on streets with a 30-mile-per-hour speed limit. Gaunt determined that the occupants of the two stopped vehicles on Riggin were not injured, and resumed his pursuit of the Cadillac.

After driving east on Riggin for over a mile, Gaunt saw the Cadillac turn westbound, enter the eastbound lane, and come directly at him. Gaunt moved the SUV to the curb to avoid a head-on collision. He made a U-turn, radioed a

pursuit broadcast, and requested additional units and a helicopter. He also activated the SUV siren, as well as the forward-facing red light, "wig-wag" red lights, flashing blue and white lights, and alternating headlights. At that point, the Cadillac was approximately 60 to 70 feet ahead of Gaunt, who was driving between 60 and 70 miles per hour.

At Findlay Avenue, the Cadillac made a U-turn and sped east on Riggin. Gaunt made eye contact with appellant as the Cadillac zoomed by. The driver's side of the Cadillac looked like it had just been sideswiped, with its outside mirror hanging by one wire, and its molding scraping the ground. Appellant accelerated as he went by. Gaunt made another U-turn and continued his pursuit. The Cadillac was smoking heavily as it returned toward the intersection of Riggin and Garfield Avenues. Gaunt smelled radiator fluid and brakes. After slowing and stalling, the Cadillac stopped, near the Garfield Inn, about 30 feet east of Riggin and Garfield Avenues.

Gaunt stopped the SUV about 15 to 20 feet behind, and slightly to the left of, the Cadillac, in a typical "felony stop" position. He used the public address system to order appellant to turn off the Cadillac and show his hands. Appellant did not comply. Gaunt stepped from the SUV and saw appellant look in his rearview mirror. Appellant backed up at high speed and rammed the Cadillac into the SUV, damaging its front bumper. Upon impact, Gaunt lost his balance and stumbled. When the Cadillac was about five feet from the SUV, Gaunt grabbed the SUV door. Upon seeing the Cadillac's reverse lights activate a second time, Gaunt fired six rounds toward the Cadillac's left rear side. Its reverse lights went off, and appellant sped away. Appellant made another U-turn and drove back toward Gaunt. Gaunt managed to dive into the SUV and slam its door. The Cadillac passed within 10 to 15 feet of the SUV and continued westbound on Riggin. Gaunt followed it.

After driving about one-quarter mile, appellant again stopped the Cadillac at a curb on Riggin. Gaunt stopped 40 to 50 feet behind him, then

followed appellant when he resumed driving westbound on Riggin. A sheriff helicopter illuminated the Cadillac with a bright spotlight. After driving for another quarter mile, appellant again stopped the Cadillac. Gaunt stopped 40 to 50 feet behind him. Sheriff patrol vehicles approached, traveling eastbound on Riggin, as appellant drove toward Findlay Avenue. One deputy was forced to move his patrol car to the curb at Findlay and Riggin to avoid a head-on collision with the Cadillac. The Cadillac collided with a car parked on the north side of Riggin.

Appellant tried without success to turn right onto Findlay, but instead drove the Cadillac over the curb. The Cadillac struck a fire hydrant on a residential lawn and stopped. Appellant put the Cadillac into reverse but its tires spun and smoked without gaining traction. Gaunt stopped the SUV close enough to the Cadillac to block it.

Appellant stayed in the Cadillac's driver's seat. Gaunt and several other deputies approached him with their guns drawn. The Cadillac's front driver-side airbag had deployed. Gaunt repeatedly ordered appellant to stop, and turn off his ignition, but he did not comply. One deputy fired a taser at appellant. Appellant moved his hands to the sides of his face. Gaunt reached through the open driver-side window of the Cadillac, turned off its ignition, and backed away. Another deputy unbuckled appellant's seat belt and tried to open the driver's door, which would not open. He pulled appellant through the open driver-side window. It required more than one deputy to handcuff him.

Los Angeles County Sheriff Deputy, Steven Huerta, and his partner walked appellant to their patrol car. Appellant swayed as he walked and seemed to lose his balance. Huerta believed that appellant might be under the influence of alcohol or drugs. Huerta told appellant they were going to take him to Monterey Park Hospital.

On the way to the hospital, Huerta advised appellant of his *Miranda* rights. (*Miranda v. Arizona* (1966) 384 U.S. 436.) Appellant agreed to talk. He

said that he had been partying "with the honies," and laughed. His eyes were bloodshot and watery and his speech was slurred. He mumbled and had trouble putting his thoughts into words. At the hospital, appellant repeatedly asked for water, which the nurses provided. One nurse drew his blood. Appellant responded to Huerta, and occasionally made comments to women who passed through the area. Huerta accompanied appellant to the patrol car to drive him to the East Los Angeles Station. Appellant continued speaking with him until Huerta said that they were going to the sheriff's station. Huerta opined that appellant's unsteady gait, slurred speech, watery eyes, and short attention span were consistent with those of someone who is under the influence of drugs or alcohol.

Criminalist Meena Shin performed an analysis of appellant's blood. It contained 22 nannograms of phencyclidine per milliliter and 393 nannograms of morphine per milliliter. The absence of codeine in the sample suggested that the morphine originated from the use of morphine or heroin. Shin testified that phencyclidine or "PCP" has widely varied effects upon users, including depressant, stimulant, and hallucinogenic effects.

James Wells, a private forensic consultant in the field of drug activity and forensic identification, reviewed the toxicology analysis of appellant's blood. Wells testified that PCP has varying stimulant, depressant, and hallucinogenic effects upon users. PCP is most often smoked but can be injected, inhaled through the nose, or absorbed through the tear ducts. It elevates heart rate, pulse rate, and respiration; it impacts eye movement, may cause hallucinations, and increases the pain threshold. Psychosis and hypertension can be side effects of PCP use. Full effects are usually felt within three to five minutes of ingesting PCP. Depending upon the dose, its effects may last between 12 and 24 hours. Opiates, including morphine, depress heart rate and most body activity. When a drug is detected in the blood, the body still exhibits its effects.

When presented with a hypothetical based on the facts of this case, Wells opined that the Cadillac driver was impaired for purposes of driving and that his driving was more consistent with that of a person driving under the influence of PCP than that of a person driving under the influence of opiates. When the hypothetical contained the additional facts that urine test results were positive for hyperglycemia and medical records indicated hypertension, diabetes, psychosis, or kidney problems, Wells still opined that the Cadillac driver was under the influence of PCP.

Defense Evidence

Doctor Marvin Pietruszka, a certified specialist in pathology, forensic toxicology, and occupational medicine, testified that he had reviewed appellant's medical records dating back to 2001. His 2001 medical records showed a very low glucose level, an altered state of consciousness, and a fainting episode. His records indicate that he suffered from diabetes mellitus, atherosclerosis of the coronary arteries and chronic renal failure and that he had a history of seizure disorders and psychosis.

Appellant's urine glucose level was 604 milligrams per deciliter on August 1, 2009. According to Dr. Pietruszka, that level required hospitalization and placed appellant at risk of going into a coma. Dr. Pietruszka opined that appellant's diabetes was significantly out of control. Extremely high blood sugar levels can produce confusion, unconsciousness, irritability, dehydration, drowsiness, and dizziness, among other symptoms. Thirst is a symptom of dehydration. Blood sugar levels below 60 milligrams could produce permanent brain damage from neuron loss. At 12:48 a.m., on August 1, 2009, appellant's blood pressure was 132 over 80, which was not an elevated level. On August 1, 2009, doctors and nurses noted that appellant exhibited an altered mental status after 3:00 a.m. His glucose level declined to 329 milligrams per deciliter on August 2, 2009, which was still an elevated level. Dr. Pietruszka admitted that stress can increase blood sugar levels.

Dr. Pietruszka testified that 22 nannograms of PCP per milliliter was an extremely small amount of PCP and that many medical conditions could simulate an altered mental status. Although PCP could cause someone to swerve while driving, watery, bloodshot eyes and slurred speech were not typical effects of PCP use.

When presented with a hypothetical based on the facts of this case, Dr. Pietruszka opined that the Cadillac's driver's erratic driving was consistent with a diabetic effect rather than PCP use. He opined that the driver would be aware that someone was chasing him but would not be able to make decisions as would a normal person under the same circumstances.

Section 2800.2 - Felony Evasion[2]

A. Substantial Evidence - Distinctive Uniform

Appellant argues that there is not sufficient evidence to support the section 2800.2 officer evasion conviction because Deputy Gaunt's "olive drab"

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[2]Section 2800.2, subdivision (a), defines felony officer evasion as follows: ". . . [I]f a person flees or attempts to elude a pursuing peace officer in violation of Section 2800.1 and the *pursued vehicle is driven in a willful or wanton disregard for the safety of persons or property*, the person driving the vehicle, upon conviction, shall be punished by imprisonment in the state prison, or by confinement in the county jail for not less than six months nor more than one year. . . ." (Italics added.)

Section 2800.1, subdivision (a), defines officer evasion as follows: " . . . [A]ny person who, while operating a motor vehicle and with the intent to evade, willfully flees or otherwise attempts to elude a pursuing peace officer's motor vehicle, is guilty of a misdemeanor punishable by imprisonment in a county jail for not more than one year if all of the following conditions exist: [¶] (1) The peace officer's motor vehicle is exhibiting at least one lighted red lamp visible from the front and the person either sees or reasonably should have seen the lamp. [¶] (2) The peace officer's motor vehicle is sounding a siren as may be reasonably necessary. [¶] (3) The peace officer's motor vehicle is distinctively marked. [¶] (4) The peace officer's motor vehicle is operated by a peace officer, . . . and that peace officer is wearing a distinctive uniform."

uniform is not a distinctive uniform within the meaning of section 2800.1, subdivision (a)(4). We disagree.

Deputy Gaunt testified: "The K-9 handler's uniform is different than the normal patrol deputy's uniform because of the job we perform. We wear a cotton uniform that is all olive drab green. We are assigned to the SWAT team. So that's the typical uniform that we wear. It's - - basically, it's a military B.D.U. [basic dress uniform] in olive drab."

In addition, the trial court admitted two photographs of the canine unit uniform that Gaunt wore on the night of appellant's arrest. In the first photograph, Gaunt is facing the camera. The short-sleeved shirt of the olive-colored uniform has a cloth olive patch with black lettering on the upper part of each sleeve, just below the shoulder. The visible portions of each patch appear to be the Los Angeles County Sheriff's Department logo. Portions of the logo are visible in the photograph, including the letters "Los Ang," which are visible arching over a centered object that appears to be a six-pointed star. There is also an American flag emblem over Gaunt's left breast and a patch with the name "Gaunt" over his right breast, above another patch that appears to be an official emblem. The second photograph shows the back of Gaunt's uniform. The word "SHERIFF" is embroidered or sewn across the upper back of the uniform shirt in large, black, capital letters, within a black border.

Section 2800.1, subdivision (a)(4), requires that the peace officer be wearing a "distinctive uniform." Appellant does not point to any related provision of law that would define "uniform" in a manner that would exclude "an olive drab" uniform that is marked like the canine unit uniform that Gaunt wore on August 1, 2009. Something is distinctive if it serves to distinguish, or sets something apart from others, or if it is characteristic of or peculiar to its type. (*People v. Estrella* (1995) 31 Cal.App.4th 716, 724.)

Gaunt's testimony describing the canine unit uniform and the photographic exhibits support the jury's finding that he wore a distinctive uniform. The statute does not require that the uniform be of any particular level of formality or that it be complete (§ 2800.2) or "that the person eluding capture actually see that the police officer is wearing a distinctive uniform." (*People v. Estrella*, *supra*, 31 Cal.App.4th at p. 724) Here, given the duration and volatility of the pursuit, the sheriff's insignia on the SUV, the activated emergency equipment and the proximity of Gaunt and appellant, including their eye-to-eye contact, strains reason to suggest that appellant was not fully aware of who was pursuing him.

B. Lesser Included Offense Instruction

Appellant contends that the trial court prejudicially erred by failing to instruct the jury sua sponte that section 2800.1 (misdemeanor officer evasion) is a lesser included offense of section 2800.2 (felony officer evasion). We disagree.

Section 2800.1, misdemeanor evasion, is a lesser included offense of section 2800.2, felony officer evasion. The only distinction between the offenses "is that in committing the greater offense the defendant drives the pursued vehicle 'in a willful or wanton disregard for the safety of persons or property.' (. . . § 2800.2.)" (*People v. Springfield* (1993) 13 Cal.App.4th 1674, 1680.) The trial court's instructions to the jury on the elements of a violation of section 2800.2, subdivision (a), included the definition of "willful or wanton disregard" contained in subdivision (b).

Trial courts are required to instruct sua sponte on a lesser included offense when the evidence presents a question whether all the elements of the charged offense are present, and there is evidence from which reasonable jurors could conclude the lesser offense, but not the greater, has been committed. (*People v. Breverman* (1998) 19 Cal.4th 142, 154-155, 162.) Here, there was not evidence from which a reasonable juror could conclude that appellant committed misdemeanor officer evasion but not felony officer evasion. Appellant contends

that the jury could conclude that his conduct did not evidence "a willful or wanton disregard for the safety of person or property" given the hour, traffic conditions and his physical problems. It is sufficient to say that appellant's outrageous behavior over a protracted period of time aligned with the callousness of his responses to Deputy Huerta belie any such suggestion.

In any event, any error in the failure to instruct sua sponte regarding the lesser included misdemeanor officer evasion was harmless. It is not reasonably probable that the jury would have found that appellant committed a misdemeanor rather than a felony officer evasion on the theory that he acted without the requisite willful and wanton disregard for the safety of persons and property. Therefore, any error in the failure to instruct on the misdemeanor offense was not prejudicial. (*People v. Watson* (1956) 46 Cal.2d 818, 836; *People v. Breverman, supra*, 19 Cal.4th at p. 178.)

Flight Instruction (CALCRIM No. 372)

Appellant also contends that the trial court erred by instructing the jury with CALCRIM No. 372 (the flight instruction) because it did not apply to the evasion offense which included flight as an element, and that the court should have modified the instruction to specify that it applied only to the assault with a deadly weapon charge. In the same vein, he argues that the instruction diminished the prosecution's burden of proof by "[telling] the jury that the mere fact the jury had found one of the elements present could be, by itself, evidence of appellant's guilt." We disagree.

The trial court instructed the jury as follows regarding flight: "If the defendant fled or tried to flee immediately after the crime was committed or after he was accused of committing the crime, that conduct may show that he was aware of his guilt. If you conclude that the defendant fled or tried to flee, it is up to you to decide the meaning and importance of that conduct. However, evidence that the defendant fled or tried to flee cannot prove guilt by itself."

Appellant failed to request a pinpoint instruction stating that as to the felony evasion offense, only the flight, if any that followed the completion of that offense can be considered. By failing to do so, he waived any error relating to the flight instruction.

Section 2800.2, Subdivision (b) Does Not Create An Unconstitutional Mandatory Presumption

Appellant contends that section 2800.2, subdivision (b), creates an unconstitutional mandatory presumption that violates due process. We disagree.

Section 2800.1, subdivision (a), makes it a misdemeanor to willfully evade a peace officer wearing a distinctive uniform and driving a marked patrol vehicle with a red light and siren activated. Section 2800.2, subdivision (a), elevates the offense to a felony where the defendant flees or evades an officer by driving a vehicle "in a willful or wanton disregard for the safety of persons or property. . . ." Subdivision (b) of section 2800.2, provides that one way to demonstrate willful or wanton disregard is to show that the defendant committed three or more Vehicle Code violations while fleeing or attempted to evade a pursuing peace officer.

The Courts of Appeal have repeatedly held, and we agree, that section 2800.2, subdivision (b), does not create an unconstitutional mandatory presumption. (*People v. Mutuma* (2006) 144 Cal.App.4th 635, 641; *People v. Laughlin* (2006) 137 Cal.App.4th 1020, 1025, 1027-1028; *People v. Williams* (2005) 130 Cal.App.4th 1440, 1444-1446; *People v. Pinkston* (2003) 112 Cal.App.4th 387, 391-394.)

Sentencing Issues

Romero

Appellant filed a sentencing memorandum that urged the trial court to exercise its discretion and strike one or both of his prior convictions for purposes of three strikes sentencing, pursuant to *People v. Superior Court (Romero)*, *supra*, 13

Cal.4th, page 504, and emphasized that a defendant's criminal history is not dispositive under California law. His counsel argued that the court should dismiss his prior strikes based on his medical conditions, his history of mental illness and substance abuse, and the age of the prior strike convictions. The prosecutor stressed appellant's 40-year history of committing crimes, including violent crimes, and driving under the influence; his failure to reform; and the danger his recent crime posed to public safety. The court declined to strike either of the prior "strike" convictions.[3]

We reject appellant's contention that the trial court abused its discretion in denying his motion to strike his prior serious and violent felony convictions for purposes of sentencing under the three strikes law. A trial court has the discretion to strike a prior conviction for purposes of sentencing if the defendant falls outside the spirit of the three strikes law. (Pen. Code, § 1385; *People v.*

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[3] The court explained its ruling as follows: "The jury found you did not harbor the intent to commit an assault on a peace officer, and I recognize that. [¶] But what is of greater concern to me is your record. In the probation report, which does [not] include some of the convictions the D.A. was talking about, there are 14 convictions from the time that you were an adult. And what is of greater concern - - and you obviously have a substance abuse problem, and I think that you recognize that as well. But what is of greater concern is the crimes of violence that you have been convicted of: a 1996 robbery, a 245(a) (1) in 1991 that was pled down to a vandalism. There is a 242 battery in 1989 and another 245(a) (1) in 1985, which was the strike prior. There is a 273 in 1979 for the willful child cruelty. So the court has real concerns about public safety issues. [¶] And then when you add to that the substance abuse issues that you have . . . failed to address and that you continue to engage in even at this age [60] in your life, that further exacerbates the issues presented to public safety. [¶] And you have been given many chances. There have been plea bargains that have reduced some of these down to misdemeanors or lesser offenses. You have done time in prison, and you come out and keep committing new crimes. So while the strikes are fairly old, I can [not] say that the conduct is remote in justifying the striking of a strike. [¶]. . .[¶] [F]or those reasons, the court is recognizing the court has the discretion to strike the strikes but is declining to do so at this time for the reasons that I have stated."

Superior Court (Romero), *supra*, 13 Cal.4th at pp. 529-530.) In deciding whether to exercise its discretion, the court "must consider whether, in light of the nature and circumstances of [the defendant's] 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* (1998) 17 Cal.4th 148, 161.)

The refusal to strike a prior conviction is likely to be considered an abuse of discretion only in extraordinary cases where the trial court was unaware of its discretion, or considered impermissible factors. (*People v. Carmony* (2004) 33 Cal.4th 367, 378.) In the absence of such a showing, the trial court is presumed to have acted to achieve the legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977-978.)

There was no abuse of discretion in this case. The record reflects that the trial court was aware of its sentencing discretion under Penal Code section 1385, did not consider any impermissible factors, and examined the current offense, as well as appellant's prior criminal record prior to making its ruling. The court considered several factors set forth in rule 4.410 of the California Rules of Court, such as protecting society, punishing appellant, and deterring his commission of future offenses. Appellant argues that the court misunderstood the scope of its discretion and abused it by failing to give measurable consideration to any factor other than his record in sentencing him. To the contrary, the court did consider and reject the factors urged by appellant's counsel as a basis of mitigation. Counsel's sentencing memorandum discussed the scope of the court's discretion and referred

to appellant's mental illness and substance abuse problem as mitigating factors. The court expressly stated that it considered the sentencing memorandum. [4]

Cruel and Unusual Punishment

We reject appellant's contention that his sentence is grossly disproportionate to his offense and constitutes cruel and unusual punishment under the Eighth Amendment of the United States Constitution. In *Rummel v. Estelle* (1980) 445 U.S. 263, 274, the United States Supreme Court upheld a mandatory life sentence under a Texas recidivist statute even though the defendant had been convicted of obtaining $120.75 by false pretenses and his prior convictions consisted of two nonviolent felonies. The Court reasoned that the sentence under a recidivist statute is "based not merely on that person's most recent offense but also on the propensities he has demonstrated over a period of time during which he has been convicted of and sentenced for other crimes." (*Id*. at p. 284.) The statute serves the legitimate goal of deterring repeat offenders and of segregating the recidivist "from the rest of society for an extended period of time." (*Ibid*.) Since appellant's strikes include violent offenses, the justification for a life sentence here is more compelling than in *Rummel*.

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[4] We also reject appellant's contention that the trial court did not "exercise informed discretion when it sentenced [him], inasmuch as it did not consider reducing appellant's conviction to a misdemeanor," and that we must therefore remand this matter for further sentencing proceedings. Appellant did not move to reduce the felony evasion to a misdemeanor (Pen. Code, § 17, subd. (b)) or object that the trial court failed to do so when it imposed the prison sentence. The burden is on appellant, the party attacking the sentence, to clearly show that the sentencing decision was irrational or arbitrary. (*People v. Superior Court (Du)* (1992) 5 Cal.App.4th 822, 831.) We presume the trial court considered all relevant sentencing criteria unless the record demonstrates otherwise. (*People v. Superior Court (Alvarez), supra*, 14 Cal.4th at pp. 974, 977.) Appellant has failed to show that the trial court lacked awareness of its discretion to reduce the felony evasion to a misdemeanor, or that the court's sentencing selection was irrational and arbitrary. (*Id*. at pp. 976-978.)

We also reject appellant's contention that his sentence violates the state constitutional prohibition against cruel or unusual punishment. (Cal. Const., art. I, § 17.) A punishment violates the state constitution if "it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity. [Fn. omitted.]" (*In re Lynch* (1972) 8 Cal.3d 410, 424.) Appellant's sentence was warranted because of his recidivism, the violent nature of his prior offenses, and the circumstances of the present offense. (See *People v. Martinez* (1999) 71 Cal.App.4th 1502.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Charline F. Olmedo, Judge

Superior Court County of Los Angeles

Janet J. Gray, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Linda C. Johnson, Supervising Deputy Attorney General, Margaret E. Maxwell, Deputy Attorney General, for Plaintiff and Respondent.