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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

JEMAL SUYIN REESE,

Defendant and Appellant.

B240339

(Los Angeles County
Super. Ct. No. YA079971)

APPEAL from a judgment of the Superior Court of Los Angeles County, Alan B. Honeycutt, Judge. Affirmed.

Patrick Morgan Ford, 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, Paul M. Roadarmel, Jr., Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted defendant Jemal Suyin Reese on one count of possession of a controlled substance (cocaine) in violation of Health and Safety Code section 11350, subdivision (a). In a bifurcated proceeding, the trial court found defendant had suffered a prior serious or violent felony conviction for voluntary manslaughter within the meaning of the “Three Strikes” law (Pen. Code, §§ 667, subds. (a), (b)-(i), 1170.12) and had served a separate prison term for a felony (*id.*, § 667.5, subd. (b)). Defendant was sentenced to an aggregate state prison term of seven years.

On appeal, defendant contends the trial court abused its discretion in declining to dismiss his prior strike in the interest of justice. Defendant also asks that we review an in camera proceeding conducted by the trial court to determine whether it properly concluded there was no discoverable material to which he was legally entitled under Evidence Code sections 1043 and 1045 and *Pitchess v. Superior Court* (1974) 11 Cal.3d 531. We affirm.

DISCUSSION

A. The Trial Court Did Not Abuse Its Discretion in Refusing To Dismiss Defendant’s Prior Strike Allegation.

It is well established that “in ruling whether to strike or vacate a prior serious and/or violent felony conviction allegation or finding under the Three Strikes law . . . or in reviewing such a ruling, the court . . . must consider 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 [Three Strikes] 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.)

We review the trial court's decision not to dismiss a prior strike allegation under Penal Code section 1385 for abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 376.) "[T]he three strikes law not only establishes a sentencing norm, it carefully circumscribes the trial court's power to depart from this norm and requires the court to explicitly justify its decision to do so. In doing so, the law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper. [¶] . . . [¶] . . . '[I]t is not enough to show that reasonable people might disagree about whether to strike one or more' prior conviction allegations. . . . Because the circumstances must be 'extraordinary . . . by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he squarely falls once he commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack' [citation], 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.'" (*Id.* at p. 378.)

Several factors emphasized by defense counsel, and acknowledged by the trial court, arguably supported defendant's request to dismiss the prior strike allegation in the interest of justice, based on his post-conviction behavior: Notwithstanding his lengthy history of drug abuse, defendant seemed sincerely remorseful and intent upon remaining drug free and becoming a productive member of society. Additionally, defendant appeared committed to his newly-found religious faith and to caring for his son and ailing mother. Defendant had also successfully participated in vocational training and substance abuse treatment programs while in county jail. According to defendant and his counsel, defendant intended to continue his rehabilitative efforts.

On the other hand, as the trial court found in declining to exercise its discretion to dismiss the prior strike allegation, there were no extraordinary circumstances by which defendant could have been deemed to fall outside the spirit of the Three Strikes law. Defendant was 40 years old at the time of the offense, and while his criminal history was not lengthy, it was serious. It also reflected defendant's failure to take advantage of

several opportunities to rehabilitate himself. In 1992, defendant was sentenced to 11 years in state prison for voluntary manslaughter involving substance abuse. After his release, defendant was arrested for possession of a controlled substance, for which he was convicted and sentenced in 1999 to a state prison term of 32 months. In 2002, while defendant was on parole for that conviction, he was again arrested and convicted for possession of a controlled substance. This time he was sentenced to an eight-year term in state prison. Following his release on parole, defendant was arrested and convicted a third time in the present case for possession of a controlled substance.

In light of this record of recidivism (see Cal. Rules of Court, rule 4.421(b)(2) [sentencing court properly considers defendant's numerous prior convictions as a circumstance in aggravation]), defendant's circumstances are not so extraordinary that he must be considered to fall outside the spirit of the Three Strikes law. The trial court acted well within its broad discretion in concluding the interest of justice would not be served by dismissing defendant's prior strike allegation.

Defendant contends his motion to dismiss his prior strike allegation was improperly denied because it contained information that mistakenly pertained to another individual concerning an unrelated case. Defendant posits the trial court must have relied on this erroneous information, having failed to mention or question it at the hearing. While the motion filed on defendant's behalf did not correspond to defendant's criminal history and the circumstances of his current conviction, there is nothing to suggest this had any effect on the trial court's decision. Indeed, the record shows the court considered letters in support of defendant's character, documents from vocational, life skills and treatment programs for substance abuse, medical records of defendant's mother, and defendant's oral and written statement to the court. Additionally, the court considered the prosecutor's opposition to the motion, which accurately set forth defendant's criminal history and the circumstances of his current conviction. The court also entertained argument from the prosecutor and defense counsel, both of whom addressed defendant's prior crimes, his current offense, the probability of his recidivism and his rehabilitative

efforts. The trial court considered the relevant factors, there was a basis for the court's decision not to dismiss defendant's prior strike allegation, and we find no abuse of discretion in that decision. (See *People v. Carmony*, *supra*, 33 Cal.4th at pp. 374-375.)

B. The Trial Court Did Not Abuse Its Discretion in Finding No Discoverable Pitchess Material.

Defendant filed a *Pitchess* motion for pretrial discovery of information in the personnel records of Los Angeles County Sheriff's Deputies David Duarte and Rahn Hunter concerning any complaints or allegations of acts of dishonesty and any exculpatory or impeachment materials within the meaning of *Brady v. Maryland* (1963) 373 U.S. 83 [83 S.Ct. 1194, 10 L.Ed.2d 215]. The trial court found good cause as to Deputy Duarte, but denied the motion as to Deputy Hunter.¹ Following its in camera review with the custodian of records, the court determined there was no discoverable material to be provided to the defense.

Pursuant to *People v. Mooc* (2001) 26 Cal.4th 1216, defendant requested we examine the transcript of the in camera hearing after the trial court determined defendant had demonstrated good cause to discover *Pitchess* material with respect to Deputy Duarte pertaining to allegations of dishonesty. We have reviewed the sealed record of the proceedings, which adequately describes the documents reviewed, and conclude the trial court satisfied the minimum requirements in determining whether there was discoverable information; no abuse of discretion occurred. (*Id.* at p. 1229.)

¹ There is no reporter's transcript in the record of the hearing on the discovery motion.

DISPOSITION

The judgment is affirmed.

JACKSON, J.

We concur:

WOODS, Acting P. J.

ZELON, J.