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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM GREEN,

Defendant and Appellant.

B276241

(Los Angeles County  
Super. Ct. No. PA081953)

APPEAL from a judgment of the Superior Court of Los Angeles County, Valerie Salkin, Judge. Affirmed.

David W. Scopp, 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, Senior Assistant Attorney General, Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, Daniel C. Chang, Deputy Attorney General, for Plaintiff and Respondent.

A jury found defendant and appellant William Green guilty of first degree residential burglary and found the gang enhancement allegation to be true. Citing defendant's two previous strikes for serious felonies—also first degree burglaries—three prior prison terms, and the fact the current offense was committed while defendant was on bail, the trial court denied his *Romero*<sup>1</sup> motion and sentenced him to 25 years to life, plus a consecutive determinate sentence of 17 years.

On appeal, defendant contends the trial court abused its discretion in denying his motion to strike one or both strikes and his sentence constitutes cruel and unusual punishment. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On the morning of August 5, 2014, a neighbor witnessed a break-in at the home across the street. The police arrived quickly after his 911 call. In short order, but after a foot chase and some jumping over fences, defendant somehow ended up back at the victim's home, where he was apprehended.<sup>2</sup> Jewelry and assorted items were recovered from a nearby yard.

Defendant waived his *Miranda* rights and consented to an interview at the police station. He admitted being a member of a sect of the East Coast Crips Gang and committing the burglary with two Crips' members, "Lowdown" and "Rara." The trio drove to the San Fernando Valley to find homes to burglarize. They

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

<sup>2</sup> One of his accomplices was arrested in a nearby parking lot.

settled on the victim's house; Defendant and Rara got out of the car and walked to the front door while Lowdown remained in the car to act as lookout and getaway driver. No one answered their knock, so the pair went to the side door where defendant used a flathead screwdriver to force his way into the home. Defendant went inside the home and took whatever valuables he could find and then left.

The owner confirmed the break-in and ransacking of his home. Watches, jewelry, and two briefcases were missing. He later identified his property at the police station.

The prosecution's gang expert testified defendant was a member of the East Coast Crips gang. He detailed criminal activities of the East Coast Crips, including burglaries for financial gain, and expressed the opinion that the crime was committed for the benefit of the gang.<sup>3</sup>

The jury was not advised of defendant's status as a current parolee when this crime was committed, but a prosecution witness testified defendant was wearing a GPS ankle monitor when apprehended. The device registered its location on the victim's property during the time of the burglary. Defendant did not testify or present any evidence.

The jury convicted defendant of first degree residential burglary (Pen. Code, § 459<sup>4</sup>) and found he committed the crime for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)). After the verdict, defendant agreed to a court trial on his two prior burglary convictions and the on-bail allegation in yet

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<sup>3</sup> Defendant does not challenge the true finding on the gang allegation.

<sup>4</sup> All statutory citations are to the Penal Code.

another burglary.<sup>5</sup> The trial court found those allegations true beyond a reasonable doubt.

Before sentencing, defendant moved to strike his two prior strikes (§ 1385; *Romero, supra*, 13 Cal.4th 497), contending “the potential sentence which the defendant faces is grossly disproportionate to the offense for which he has been convicted and is not in keeping with evolving standards of human decency.” Defendant stressed the “minor nature” of the current offense and noted that even with the prior strikes stricken, a lengthy sentence would still be imposed. Defendant noted the victim’s home was not occupied at the time of the burglary, no firearm was used, no one was injured, and nothing in his criminal history suggested he was a violent individual.

The prosecution opposed the motion, arguing defendant’s criminal history began in 2006 with the sustaining of a juvenile delinquency petition alleging he was a minor in possession of a firearm. As an adult, defendant was convicted in 2007 of unlawfully carrying a loaded firearm and in 2008 and 2009 of separate first degree residential burglaries. He committed the current crime while on parole from an earlier prison term, wearing a GPS monitor, and out on bail for an earlier 2014 burglary. Finally, he participated in the current burglary with other gang members for the benefit of the gang.

The trial court denied the motion: “I’m not going to grant the *Romero* motion. I think [defendant] has demonstrated a lifetime of criminal behavior that frightens people, that terrifies

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<sup>5</sup> When the burglary that is the subject of this appeal was committed, defendant was out of custody and on bail for a second degree burglary alleged to have been committed May 30, 2014. Defendant pleaded no contest to that offense in October 2015.

people. I think he's the type of individual that Three Strikes was designed to address. I think the fact that he was out on bail for another serious felony and then committed the current felony on a group of people and, you know, violated people in their home or violated their homes did in fact, in my view, make him deserve the life sentence that I'm going to impose on this case."

Defendant was sentenced to a term of 25 years to life for burglary, consecutive terms of five years for each of the two section 667, subdivision (a)(1) enhancements, a consecutive two-year term for the on-bail enhancement (§ 12022.1), and a consecutive five years for the gang enhancement.

## DISCUSSION

### I. ***Romero* Motion**

The trial court's decision not to strike a prior serious felony conviction allegation "in the furtherance of justice" under section 1385 is reviewed for abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 374 (*Carmony*)). The Supreme Court explained the "fundamental precepts" that guide our review as follows: "First, "[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] 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." [Citations.] Second, a "decision will not be reversed merely because reasonable people might disagree. 'An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.'"

[Citation.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.” (*Id.* at pp. 376-377.)

The Three Strikes law “was intended to restrict courts’ discretion in sentencing repeat offenders,” (*Romero, supra*, 13 Cal.4th at p. 528) and “the law creates a strong presumption that any sentence that conforms [to it] is both rational and proper.” (*Carmony, supra*, 33 Cal.4th at p. 378.) However, the Supreme Court has recognized there may be peculiar circumstances that render application of the Three Strikes sentencing formula “arbitrary, capricious or patently absurd.” (*Ibid.*, quoting *People v. Gillispie* (1997) 60 Cal.App.4th 429, 434.) In those limited circumstances a trial court’s refusal to strike prior strikes constitutes an abuse of discretion.

In reviewing a trial court’s decision declining to strike one or more prior serious and/or violent felonies, we “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 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 circumstances must be “extraordinary” for a career criminal to be deemed to fall outside the spirit of the Three Strikes sentencing scheme. (*Carmony, supra*, 33 Cal.4th at p. 378.)

We find no extraordinary circumstances here that take defendant “outside the . . . spirit” of the Three Strikes law. In terms of background and character, defendant was 25 years of

age when the current crime was committed, an active gang member, and a career criminal with a penchant for burglary. He was out of custody and present in court on July 31, 2014, on a pending burglary charge, and then five days later he broke into the victim's home, all while wearing a GPS ankle monitor because he was on parole from his prison sentence imposed for an even earlier residential burglary. As the trial court observed, defendant is "the type of individual that Three Strikes was designed to address."

In terms of prospects, defendant appeared committed to obtaining his GED and described his family as loving and supportive. But those prospects were not enough to keep defendant from engaging in serious criminal behavior.

Additionally, defendant's characterization of residential burglary as a "mere[] property crime" is far from the mark. ""Burglary laws are based primarily upon a recognition of the dangers to personal safety created by the usual burglary situation—the danger that the intruder will harm the occupants in attempting to perpetrate the intended crime or to escape and the danger that the occupants will in anger or panic react violently to the invasion, thereby inviting more violence."" (People v. Valencia (2002) 28 Cal.4th 1, 7, quoting People v. Davis (1998) 18 Cal.4th 712, 721, disapproved of on other grounds in People v. Yarbrough (2012) 54 Cal.4th 889, 894.)

## **II. Cruel and Unusual Punishment**

Defendant next contends the life sentence for burglary, a serious felony, constitutes cruel and unusual punishment in violation of the federal and state Constitutions because he was

only convicted of a “non-violent burglary with no person present.” We disagree.

The Eighth Amendment’s prohibition against cruel and unusual punishment does not require strict proportionality between the crime and sentence; rather, it forbids sentences that are grossly disproportionate to the severity of the crime. (*Ewing v. California* (2003) 538 U.S. 11, 23-24 (*Ewing*)). *Ewing* is particularly instructive for our analysis. There, a career criminal was sentenced to 25 years to life for shoplifting three golf clubs, valued at more than \$1,000. While that offense could have been prosecuted as either a felony or misdemeanor, most of the defendant’s criminal history involved residential burglaries. (*Id.* at p. 30.) In rejecting the defendant’s claim that his sentence constituted cruel and unusual punishment, the plurality noted, “The California Legislature therefore made a ‘deliberate policy decision . . . that the gravity of the new felony should not be a determinative factor in “triggering” the application of the Three Strikes Law.’ [Citation.] Neither the Eighth Amendment nor this Court’s precedent forecloses that legislative choice.” (*Id.* at p. 30, fn. 2.)

Our Supreme Court acknowledged in *In re Coley* (2012) 55 Cal.4th 524 that “proportionality is central to [an] Eighth Amendment” challenge to a criminal sentence (*id.* at p. 538) and *Ewing* “did not eliminate the possibility that some triggering offense, although designated a felony under California law, might be so minor and unrelated to the goal of deterring recidivism that a 25-year-to-life sentence would be ‘grossly disproportionate’ and constitute cruel and unusual punishment under the Eighth Amendment, even when imposed upon a defendant with a serious criminal record.” (*Id.* at p. 529.) The defendant’s offense in *Coley*



was his failure to timely update his sex offender registration. That crime resulted in a 25 years-to-life sentence. The California Supreme Court determined the sentence was not cruel and unusual under the United States Constitution.

The federal proportionality analysis does not support defendant's position. Our Legislature has determined crimes need not be both serious and violent to result in Three Strikes sentencing. Deterring recidivism and promoting public safety justify increased punishment for serial offenders who commit serious *or* violent felonies. (*Ewing, supra*, 538 U.S. at pp. 25, 26.) Based on defendant's history of committing serious felonies, the sentence for the latest offense, another serious felony, was not grossly disproportionate to the crime or cruel and unusual under the federal Constitution.

Nor did defendant's sentence violate the California Constitution's prohibition against "cruel or unusual" punishment. A grossly disproportionate sentence that "shocks the conscience and offends fundamental notions of human dignity" violates the California Constitution. (*People v. Virgil* (2011) 51 Cal.4th 1210, 1287, internal quotation marks omitted.) Defendant's sentence did neither.

**DISPOSITION**

The judgment is affirmed.

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DUNNING, J.\*

We concur:

KRIEGLER, Acting P. J.

BAKER, J.

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