

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVE JESSE CARILLO,

Defendant and Appellant.

B281899

(Los Angeles County  
Super. Ct. No. VA141856)

APPEAL from an order of the Superior Court of  
Los Angeles County, Robert J. Higa, Judge. Affirmed.

Lenore De Vita, 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, Shawn McGahey Webb and Kathy S.  
Pomerantz, Deputy Attorneys General, for Plaintiff and  
Respondent.

---

Steve J. Carillo appeals from the judgment entered following his conviction by a jury of elder abuse (Pen. Code, § 368, subd. (b)(1))<sup>1</sup> and assault with a deadly weapon (§ 245, subd. (a)(1)) with special findings by the jury that he had personally used a deadly or dangerous weapon in committing elder abuse (§ 12022, subd. (b)(1)) and inflicted great bodily injury on an individual 70 years of age or older in committing both offenses (§ 12022.7, subd. (c)), and by the court in a bifurcated proceeding, based on Carillo's admission, that he had suffered one prior serious felony conviction within the meaning of section 667, subdivision (a), and the three strikes law (§§ 667, subds. (b)-(i); 1170.12). Carillo was sentenced to an aggregate state prison term of 19 years. On appeal Carillo contends the trial court abused its discretion in denying his request to dismiss his prior strike conviction. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. The Evidence Supporting Carillo's Convictions*

The evidence at trial established that Carillo approached 90-year-old Donald Niemand at a gas station in Downey on the morning of December 25, 2015. As Niemand was putting gas in his car, Carillo said he was homeless and asked for money. Niemand responded that he did not have any money to give Carillo. Before Carillo walked away, Niemand felt a sharp pain in his back. He believed Carillo had hit him.

Unaware that he had been stabbed, Niemand drove to his bank, withdrew money from an ATM and drove home. At home Niemand touched his back and realized he was bleeding. His son took him to the hospital. The pain from the injury was still

---

<sup>1</sup> Statutory references are to this code.

bothering Niemand when he went for a follow-up appointment the next week. Niemand testified his health had deteriorated dramatically in the year since the incident, “and I can’t help but suspect that there’s some relationship.”

Prior to approaching Niemand, Carillo had asked Christian Vega, who was washing his car at the gas station, for money. After telling Carillo he did not have any money, Vega saw Carillo walk toward Niemand as Niemand was pumping gas. The two men were standing close together. Vega then noticed Niemand grab his back. Concerned because Niemand appeared so old, Vega told the station’s cashier that “something happened” and asked him to call the police.

A surveillance video of the incident was shown to the jury. The footage showed Carillo stab Niemand.

Testifying in his own defense, Carillo admitted he had been at the gas station on the morning of December 25, 2015 asking for money and identified himself in portions of the surveillance video, but denied he had stabbed, or even talked to, Niemand. Carillo insisted the poor quality surveillance video did not show him attacking Niemand.

## *2. Carillo’s Prior Serious Felony Convictions*

During cross-examination Carillo admitted he had been convicted as an adult of assault with a deadly weapon in 1996. At the bifurcated bench trial following the jury’s verdict convicting Carillo of both elder abuse and assault with a deadly weapon, Carillo admitted he had been convicted of possession of brass knuckles in 2012 and of attempted robbery with a great bodily injury enhancement in 1996.

### 3. *The Request To Dismiss the Prior Strike Conviction*

Together with his postconviction sentencing memorandum, defense counsel requested the court dismiss Carillo's prior strike conviction in furtherance of justice. (§ 1385; *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.) In support of this request counsel stated, although Carillo had been tried as an adult, he was only 16 years old when he committed the prior strike offense (attempted robbery);<sup>2</sup> and he argued the 1996 conviction for that crime was remote in time. Counsel also contended Carillo's other convictions for drug offenses and small thefts since his 2002 release from prison suggested a history of drug addiction. Finally, defense counsel argued the current offense was relatively minor in nature and explained, even if it dismissed the prior strike, the court could still impose a lengthy sentence.

At the sentencing hearing the prosecutor argued the current offense was similar to the earlier serious felony (both involved assault with a deadly weapon) and emphasized Carillo's continuing pattern of criminal behavior since his release from prison on parole in 2002.

The trial court denied the request without stating any reasons. Carillo was sentenced to 19 years in state prison on the elder abuse count: the upper term of four years, doubled for the prior strike, plus five years for the prior serious felony conviction, plus an additional five years for causing great bodily injury to an individual 70 years old or older, plus one year for the dangerous or deadly weapon enhancement. Sentence on the aggravated assault count was stayed pursuant to section 654.

---

<sup>2</sup> Carillo was also convicted of assaulting the intended robbery victim with a deadly weapon, but he apparently admitted only the prior attempted robbery conviction.

## DISCUSSION

### 1. *Governing Law*

Section 1385, subdivision (a), vests the court with discretion to dismiss a qualifying strike conviction “in furtherance of justice.” (*Romero, supra*, 13 Cal.4th at p. 530; *People v. Williams* (1998) 17 Cal.4th 148, 158.) “[I]n 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.” (*Williams*, at p. 161.)

We review the trial court’s decision not to dismiss a prior strike allegation under section 1385 for abuse of discretion. (*In re Large* (2007) 41 Cal.4th 538, 550.) ““The burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary.”” (*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.)

2. *Denial of Carillo’s Request To Dismiss His Prior Strike Conviction Was Well Within the Trial Court’s Discretion*

Although the trial court did not identify on the record its reasons for denying Carillo’s request to dismiss the prior strike conviction, the prosecutor and defense counsel both addressed the nature and scope of the court’s discretion under governing Supreme Court authority and identified relevant factors for it to consider. Even if reasonable minds might disagree whether Carillo’s request had merit, denial of the motion conformed to the spirit of the three strikes law and was neither irrational nor arbitrary.

As the Attorney General argues, Carillo’s contention to the contrary notwithstanding, stabbing a vulnerable 90-year-old man for no apparent reason and causing great bodily injury, Carillo’s current offense, was extremely serious. In addition, the prior strike felony—described by the prosecutor without objection during the *Romero* hearing as stabbing a woman in the face during an attempted robbery—was substantially similar to the instant offense, making it highly significant despite its age. Moreover, although the aggravated assault/attempted robbery had occurred 20 years prior to the current crimes, Carillo had numerous felony and misdemeanor convictions during the

intervening period. (See *People v. Gaston* (1999) 74 Cal.App.4th 310, 321 [remoteness of 17-year-old priors insignificant in light of defendant's long criminal history]; *People v. Barrera* (1999) 70 Cal.App.4th 541, 552-555 [14-year-old conviction not too remote in light of defendant's lengthy criminal history].) In sum, the decision to deny the request to dismiss the prior strike conviction was well within the trial court's discretion.

### **DISPOSITION**

The judgment is affirmed.

PERLUSS, P. J.

SEGAL, J.

FEUER, J.\*

---

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