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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

HARRY JAMES ROBERSON,

Defendant and Appellant.

2d Crim. No. B278465
(Super. Ct. No. 2001034420)
(Ventura County)

Harry James Roberson appeals an order denying his petition for resentencing pursuant to Penal Code section 1170.126, the Three Strikes Reform Act of 2012.¹ We affirm.

FACTUAL AND PROCEDURAL HISTORY

On November 16, 2001, the Ventura County District Attorney charged Roberson with second degree robbery (count 1) and evading a police officer (count 2). (§ 211; Veh. Code, § 2800.2, subd. (a).) The information also alleged that a principal was armed with a firearm during commission of the robbery.

¹ All further statutory references are to the Penal Code unless stated otherwise.

(§ 12022, subd. (a)(1).) The charges concerned Roberson's participation as a getaway driver in the 2000 robbery at a cigarette store and the dangerous freeway pursuit that ensued.

Following a jury trial, Roberson was convicted of both counts and the arming allegation was found true as to count 1. In a separate proceeding, the trial court found that Roberson suffered four prior serious felony strike convictions in 1997. The strike convictions arose from Roberson's participation as a getaway driver in the robbery of four victims at a Circuit City store.

The trial court then sentenced Roberson to a term of 26 years to life for count 1, and a term of 25 years to life for count 2, the terms to be served concurrently. The court imposed a \$2,000 restitution fine and a \$2,000 parole revocation restitution fine (suspended), ordered victim restitution, and awarded Roberson 877 days of presentence custody credit.

Roberson appealed. We affirmed the judgment in *People v. Roberson* (Dec. 2, 2003, B161482) [nonpub. opn.]. In December 2012, Roberson filed a petition for habeas corpus in the trial court, seeking recall of his three-strike sentence pursuant to section 1170.126. The trial court denied the petition. Roberson then filed a habeas corpus petition in this court seeking the same relief. We issued an order to show cause returnable to the trial court for the purpose of reconsidering Roberson's recall petition.

The trial court then held further proceedings regarding the petition. Among other issues, the parties filed written arguments contesting Roberson's risk of danger to public safety. (§ 1170.126, subd. (f).) The court conducted an evidentiary hearing and received written evidence and testimony regarding Roberson's rehabilitation and risk of dangerousness.

Evidentiary Hearing

Roberson presented written evidence from a prison correctional officer stating that he (Roberson) rendered first aid to another inmate who was choking. The officer stated that “[t]his type of positive conduct is how inmate Roberson conducts himself on a daily basis.”

Prison Chaplain David Alvarez declared that Roberson participated in the Muslim spiritual community and served as a facilitator (chief assistant to the pastor) for the community. Alvarez described Roberson as “a model inmate.”

The prison librarian declared that Roberson is respectful and assists other inmates with the computer system. Roberson also taught other inmates reading skills using the Laubach Literacy method, a teaching program that he had mastered.

Roberson presented diplomas and certificates reflecting that he has earned an Associate of Arts college degree and completed vocational training in carpentry, electronics, heating and air conditioning, and welding. He also offered a letter from his wife whom he married during his confinement. Mrs. Roberson stated that Roberson is now older and wiser and is a devoted husband and father. Other relatives also wrote supportive letters on Roberson’s behalf, including his sister, niece, and adult son.

At the hearing, Roberson presented testimony from Steve Bono, Pastor Ayub Haroun, and Dailon Roberson.

Bono was Roberson’s vocational electronics instructor and described Roberson as “above exceptional” as a student and team leader. He opined that Roberson is employable and has potential to become a job foreman. Bono stated that Roberson is a calming

influence in the classroom, given that the class contained “27 guys that are in 27 different states of emotional distress.”

Pastor Haroun is the Muslim chaplain at the prison and he knew Roberson through Islamic religious services. He opined that Roberson is committed to his faith, society, and the law. Haroun added that Roberson served as his assistant for two years and is a peacemaker within the prison.

Dailon Roberson, Roberson’s adult son, testified that his father has been imprisoned during most of his (Dailon’s) childhood. He stated that he and his father have maintained close contact, however, through frequent correspondence and telephone calls. He views his father as a positive role model in view of his father’s rehabilitation.

The prosecutor did not counter Roberson’s evidence of rehabilitation during Roberson’s approximately 14 years of imprisonment. Instead, the prosecutor relied upon the factual circumstances of the 1997 and 2000 robberies and Roberson’s juvenile criminal history as set forth in the 2002 probation report.

The 2000 cigarette store robbery involved Roberson’s crime partners taking 285 cartons of cigarettes from the cashier of a cigarette store at gunpoint. Roberson was the driver of one of two getaway minivans. During a police pursuit, Roberson drove at dangerously high speeds on the freeway, made unsafe lane changes, and drove on the right-hand shoulder. Eventually, Roberson left the freeway, stopped the minivan, and ran into a residential backyard.

The 1997 robbery involved Roberson’s crime partner committing robberies of four victims at gunpoint at a Circuit City store. Roberson waited outside the store in a stolen vehicle.

When his partner returned to the vehicle, Roberson drove erratically and at high speed for seven miles to evade a pursuing police officer. He then left the freeway, stopped the vehicle, and fled, but was eventually apprehended.

At the age of 13, Roberson stole a car and drove recklessly as police pursued. He stopped the car in the freeway emergency lane and ran, but was caught by the officers. Less than two weeks later, Roberson brandished a firearm and threatened to shoot a student. A fight over the firearm ensued and a third person kicked the victim in the head. Roberson and the third person then ran away.

Following argument by the parties, the trial court denied the resentencing petition. Roberson appeals and contends that the trial court erred by: 1) declining to sentence him to a two-strike sentence because the four strikes (1997 robbery at a Circuit City store) arose from one act, i.e., driving the getaway vehicle, and 2) determining that sentencing him to a two-strike sentence would pose an unreasonable risk of danger to public safety.

DISCUSSION

I.

Roberson argues that the trial court erred by denying his motion pursuant to *People v. Vargas* (2014) 59 Cal.4th 635 (*Vargas*) to resentence him to a two-strike sentence. (*Id.* at pp. 637, 645 [two prior convictions arising from a single act against a single victim cannot constitute two strikes pursuant to the three strikes law].) He asserts that he committed the single act of driving a getaway vehicle. Roberson claims that his three-strike sentence is therefore an unauthorized sentence that may be corrected at any time.

In *Vargas, supra*, 59 Cal.4th 635, 637, our Supreme Court held that two prior convictions arising from a single act against a single victim could not constitute two strikes. There, the defendant had two prior strikes -- carjacking and robbery -- which were based on the same act of taking the victim's car by force. (*Id.* at p. 645.) The trial court counted each prior conviction separately and sentenced the defendant to prison for 25 years to life. (*Id.* at p. 639.)

Our Supreme Court concluded that Vargas's case fell into a "rare category" because her "two strikes were based on the same act." (*Vargas, supra*, 59 Cal.4th 635, 642.) The court reasoned that treating the defendant as a third-strike offender was inconsistent with the intent underlying the legislative and initiative versions of the three strikes law. (*Id.* at p. 645.) In vacating the judgment, the court stated: "We conclude this is one of the extraordinary cases [citation] in which the nature and circumstances of defendant's prior strike convictions demonstrate the trial court was required to dismiss one of them because failure to do so would be inconsistent with the spirit of the Three Strikes law." (*Id.* at p. 649.)

Roberson is not entitled to resentencing pursuant to *Vargas*. His four prior strikes arose from the 1997 armed robbery of four individuals in a Circuit City store. Pursuant to principles of criminal liability, Roberson was properly convicted of the four robberies committed inside the store by his crime partner. (§ 31 ["All persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission . . . are principals in any crime so committed"]; *People v. Covarrubias* (2016) 1 Cal.5th 838, 905 [statement of general rule].) The

Circuit City robberies did not involve a single act against a single victim as was the situation in *Vargas*. As such, Roberson's sentence is not unauthorized.

II.

Roberson asserts that the trial court abused its discretion by finding that he currently poses an unreasonable risk of danger to public safety. He points to the overwhelming evidence of rehabilitation as reflected by his college diploma, four vocational training certificates, attendance at self-help classes, and letters from inmates and prison employees describing his efforts to assist other inmates in learning to read and to resolve conflicts peacefully.

Section 1170.126 permits a person presently serving a three strikes sentence for a felony that is neither serious nor violent to petition for resentencing as a second-strike offender subject to certain disqualifying exceptions. If the petitioner is not subject to one of the disqualifying factors, then the trial court shall resentence him pursuant to the two-strike provision "unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety." (*Id.*, subd. (f).) In exercising its discretion, the court must consider the petitioner's criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes; the petitioner's disciplinary record and record of rehabilitation while incarcerated; and any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety. (*Id.*, subd. (g).)

The trial court possesses discretion to determine whether a petitioner presents an unreasonable risk to public safety. (*People v. Williams* (2018) 19 Cal.App.5th 1057, 1061.) In our review, we determine whether the court’s ruling is reasonable. (*Id.* at p. 1062.) Moreover, the abuse-of-discretion standard of review involves “abundant deference” to the court’s ruling. (*Ibid.*)

In view of Roberson’s seven-year span of criminal acts involving threats with a firearm, armed robbery, and dangerous and frightening freeway pursuits, the trial court did not abuse its discretion. The interludes between Roberson’s crimes are brief and he committed the present offenses while on parole for the Circuit City armed robbery.

Roberson has been a model inmate during confinement. Although a different conclusion of dangerousness may be drawn from the evidence of his commendable rehabilitation, we cannot say the trial court’s conclusion constitutes an abuse of discretion.

The order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Jeffrey G. Bennett, Judge

Superior Court County of Ventura

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