

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

THOMAS BYREM,

Defendant and Appellant.

B280106

(Los Angeles County
Super. Ct. No. NA101193)

APPEAL from the judgment of the Superior Court of Los Angeles County, Jesse I. Rodriguez, Judge. Affirmed.

Teresa Biagini, 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, Herbert S. Tetef and Nathan Guttman, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Defendant Thomas Byrem was convicted by jury of one count of first degree burglary of an inhabited dwelling (Pen. Code, §§ 459, 460).¹ Prior conviction and prison term allegations were found to be true by the trial court (§§ 1170.12, 667, subds. (b)-(j), 667.5, subd. (b)). The trial court denied defendant's *Romero*² motion, and defendant was sentenced to an aggregate term of 30 years to life in prison, consisting of 25 years to life under the "Three Strikes" law for the burglary, and a five-year serious felony enhancement. On appeal, defendant contends the trial court abused its discretion when it refused to dismiss his prior strike convictions. We affirm.

FACTS

1. The Burglary

Early in the morning on February 6, 2015, defendant entered an unlocked home in Long Beach. One of the occupants, Jared Reynolds, was awakened by the sound of one of his dogs barking. Mr. Reynolds's then girlfriend, Crystal Reed, thought she heard someone in the house. She called out to the intruder, but did not receive a response. Mr. Reynolds went into the living room to investigate, and found defendant sitting on the couch in the dark, with two bags at his feet. Mr. Reynolds told defendant that he needed to leave, but defendant did not move. When Mr. Reynolds told Ms. Reed to call the police, defendant grabbed his bags and walked toward Mr. Reynolds. He stopped by the bedroom door and peered in at Ms. Reed. He said, "[Y]our dogs

¹ All undesignated statutory references are to the Penal Code.

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

aren't shit," with an aggressive look on his face. Mr. Reynolds grabbed defendant by his collar and pushed him out the front door. Defendant left, and Mr. Reynolds locked the door.

Police apprehended defendant, and Mr. Reynolds identified him as the intruder who entered his home. A WiFi adapter found on defendant belonged to Mr. Reynolds. Defendant did not have any weapons on him.

2. Defendant's *Romero* Motion

The information alleged that defendant had two prior strike convictions for assault with a firearm. Defendant moved under section 1385 and *Romero* for the trial court to either dismiss both strike convictions, or to treat them as one strike. According to defendant, he suffers from mental illness and drug addiction, and his prior offenses were committed during a multi-day drug binge where defendant stopped taking his psychotropic medications. The People opposed the motion.

Defendant's strike offenses were committed on April 23 and 24 in 1996. On April 23, defendant entered a dry cleaning business in Lancaster, wearing a mask, and demanded that the victim "open the drawer." Defendant brandished a revolver and pointed it in the air. The victim ran to the back of store, and heard two gunshots. The victim then saw defendant leave the store. Police found two bullet holes in the building; one through a center cross beam and another on the rear wall. Defendant did not take any money because he was unable to open the register.

On April 24, defendant entered a restaurant in Lancaster, wearing a mask, and demanded that the victim open the cash register at gun point. The victim lunged at defendant, and the two struggled. Defendant pointed the gun at the victim and pulled the trigger three times, but the gun failed to fire. Other

employees became involved in the scuffle. At one point, defendant pointed the gun at the victim's head, and one of the employees thrust his thumb between the hammer and the frame to prevent the gun from discharging. An employee was able to take the gun from defendant, and was able to subdue him until police arrived and defendant was arrested. A live round was found in the gun.

In 1997, defendant entered a guilty plea to two counts of assault with a firearm, and was sentenced to 14 years in prison.

Besides his strike offenses, defendant has an extensive criminal history, beginning in 1981, with over 20 misdemeanor convictions, including violent offenses such as assault, and battery on a peace officer. The assault occurred after defendant was released from his prison term for the strike offenses. He severely beat a female transient after she refused to buy more vodka for him. Defendant also has 1987 and 2014 felony drug possession convictions.

According to his motion, defendant grew up in a home with an alcoholic mother, and abusive stepfathers. He began using drugs and alcohol at a very young age, and turned to heroin when he was kicked out of the family home at the age of 18. Over the years, he suffered a number of convictions, and was in and out of custody. He attempted methadone treatment, and tried to settle down to support his girlfriend and son, who was born in 1990. He also received vocational training, and experienced some periods of sobriety and stability, but ultimately could not remain free from drugs or crime. Defendant was diagnosed with schizophrenia in 1995, and was prescribed anti-psychotic medication. According to defendant, the strike offenses occurred "in a haze of drug and alcohol intoxication after a relapse from sobriety." A psychiatric

evaluation conducted in 1995 opined that defendant was under the influence of drugs when he committed the strike offenses, and that he had “blacked out.”

The trial court denied defendant’s motion, finding that the current offense involved a “very dangerous situation” as the victims were in bed when defendant entered their home.

DISCUSSION

Defendant contends he does not fall within the spirit of the Three Strikes law, because his strikes arose from a single period of “aberrant” behavior, when defendant was suffering from a “psychotic break” and drug relapse; and because he was unarmed and did not threaten his victims during his current offense. We disagree, and find no abuse of discretion.

Trial courts have discretion under section 1385 to dismiss Three Strikes allegations in the furtherance of justice. We review the trial court’s decision under the abuse of discretion standard of review. (*Romero, supra*, 13 Cal.4th at p. 530; *People v. Carrasco* (2008) 163 Cal.App.4th 978, 992-993.) The burden is on the party attacking the sentence to show the sentencing decision was an abuse of discretion. In the absence of such a showing, the trial court is presumed to have acted appropriately, and a sentence will not be set aside. (*People v. Carmony* (2004) 33 Cal.4th 367, 376-377.) An abuse of discretion occurs only when the trial court was not aware of its discretion to dismiss, where the court considered impermissible factors, or where the defendant clearly falls outside the spirit of the Three Strikes law. (*People v. Scott* (2009) 179 Cal.App.4th 920, 926.) The analysis is whether, in light of the nature and circumstances of the present crimes and prior qualifying convictions, and defendant’s background, character, and prospects, he may be deemed to fall outside the

spirit of the Three Strikes law and should therefore be treated as if he had not previously been convicted of one or more qualifying felonies. (*Carrasco*, at p. 993.)

Defendant's extensive criminal history, spanning more than 30 years, demonstrates that defendant has not learned any lesson from his repeated incarcerations, there is nothing "aberrant" about his criminality, and there is no realistic prospect that he could ever live a crime-free life outside of custody. He has repeatedly put others at risk, and engaged in violent and dangerous behavior. The trial court did not err in finding defendant is within the spirit of the Three Strikes law. (See *People v. Williams* (1998) 17 Cal.4th 148, 163.)

DISPOSITION

The judgment is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.