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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DENNIS BALISCAN REGALADO,

Defendant and Appellant.

B276909

(Los Angeles County  
Super. Ct. No. MA058648)

APPEAL from a judgment of the Superior Court of Los Angeles County. Christopher G. Estes, Judge. Affirmed as modified with directions.

William Martin Hassler, 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, Assistant Attorney General, Margaret E. Maxwell, Nicholas J. Webster and Amanda Lopez, Deputy Attorneys General, for Plaintiff and Respondent.

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In a trial by jury, defendant and appellant Dennis Baliscan Regalado was found guilty of assault with a firearm (Pen. Code, § 245, subd. (a)(2), count 3);<sup>1</sup> two counts of criminal threats (§ 422, subd. (a), counts 2 & 4); dissuading a witness from reporting a crime (§ 136.1, subd. (b)(1), count 5); two counts of possession of a firearm by a felon with two priors (§ 29800, subd. (a)(1), counts 6 & 7); possession of ammunition (§ 30305, subd. (a)(1), count 8); and dissuading a witness from testifying (§ 136.1, subd. (a)(1), count 9). Defendant was originally sentenced to 113 years to life in prison.

On April 14, 2015, this court found that defendant's sentence violated California's prohibition against cruel or unusual punishment. (Cal. Const., art. I, § 17; *People v. Regalado* (Apr. 14, 2015, B255074) [nonpub. opn.] (*Regalado I*)). We remanded the matter to the trial court for resentencing. (*Regalado I*, *supra*, B255074, at p. 2.)

On August 19, 2015, the trial court resentenced defendant to 39 years to life on count 3; a concurrent term of 39 years to life on count 2; and 25 years to life on count 9, for a total of 64 years to life. (*People v. Regalado* (Apr. 5, 2016, B266688) [nonpub. opn.] (*Regalado II*)). Defendant again appealed, and on April 5, 2016, we again reversed and remanded the matter for resentencing; we directed that all further proceedings be heard by a new judge. (*Regalado II*, *supra*, B266688, at p. 2.)

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

On remand, defendant filed a *Romero* motion.<sup>2</sup> The People opposed his motion. After entertaining oral argument, the trial court granted defendant's motion as to count 9 and denied it as to counts 2 through 5. The trial court sentenced defendant to 53 years to life as a third-strike defendant, comprised of four years for count 9, plus 10 years for the two prior conviction enhancements (§ 667, subd. (a)(1)), and 25 years to life for count 3, plus four years for being personally armed with a firearm in the commission of the offense (§ 12022, subd. (a)), and 10 years for the two prior conviction enhancements (§ 667, subd. (a)(1)). The trial court imposed a concurrent sentence of 39 years to life for count 2 and stayed counts 4 through 8. Defendant was awarded various custody credits. Various fines were imposed, including a \$30 criminal conviction assessment (Gov. Code, § 70373) and a \$40 court operations assessment (§ 1465.8, subd. (a)(1)).

Defendant again appeals, renewing his argument that his sentence amounts to cruel and unusual punishment. The People request that we affirm the judgment, but correct the assessments imposed on defendant by increasing his criminal conviction assessment to \$240 and by increasing his court operations assessment to \$320.

We agree with the People that defendant's sentence is not unconstitutional. We also agree with the People that the two assessments must be corrected and increased. We therefore affirm and modify the judgment.

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

## **FACTUAL BACKGROUND**

The underlying facts are summarized in our prior opinion. (*Regalado I, supra*, B255074, at pp. 3–5.) Briefly, on May 29, 2012, defendant was home with his wife. Defendant was drunk. Defendant and his wife had an argument, and defendant threatened to kill his wife. He pointed a shotgun at her head. He threatened to bury her alive. At one point, he grabbed her by the throat and instructed her to open her mouth. Defendant’s wife was scared that defendant was going to kill her; she was able to get away and go to the police station.

On June 10, 2012, defendant and his wife again engaged in an argument. Defendant again pointed a shotgun at her and threatened to kill her.

While defendant was in the county jail, he attempted to dissuade his wife from testifying against him.

Facts regarding defendant’s two prior convictions are also summarized in *Regalado I*. In 2006, defendant argued with a neighbor, retrieved a gun, and fired a shot in the air. In 2010, he argued with other neighbors and threatened to shoot them.

## **PROCEDURAL BACKGROUND**

After we remanded the matter a second time, the trial court held a hearing on defendant’s *Romero* motion. At that hearing, the trial court indicated that it had read the probation report, the transcript of the original sentencing by the prior judge, and the two Court of Appeal opinions. It then recounted defendant’s criminal history.

The trial court went on to describe the facts underlying defendant's current and prior convictions. It noted that in one of defendant's past strike convictions, defendant had a hand grenade in his house when he was arrested and that he was out on probation for his second strike when he committed the present offenses. The trial court also commented that defendant evidenced a "level of callousness or viciousness" when he "grabbed" his wife by the throat and "instructed her to open her mouth so he could put the gun—the shotgun into her mouth."

Based upon these facts, and having considered defendant's "background, character, and prospects," the trial court preliminarily found that it would only be appropriate to grant the *Romero* motion as to count 9, because that count "differ[ed] greatly" from the other counts and only involved defendant's telephone calls from jail. Defense counsel then argued that defendant had rehabilitated himself in prison, had never actually hurt anyone, and his actions did not rise to the level of a terrorist or murderer. Thereafter, the trial court adopted its preliminary finding, citing defendant's "pattern of violent threatening behavior." It rejected defense counsel's argument that defendant's sentence was unconstitutional, noting that the Court of Appeal had not ordered it to grant a *Romero* motion.

Defendant was sentenced to 53 years to life.

## **DISCUSSION**

### *I. Defendant's Prison Sentence*

Defendant contends that his sentence of 53 years to life violates both the United States and California Constitutions because it is "grossly disproportionate to [his] offenses and personal culpability."

#### A. Eight Amendment

A sentence is cruel or unusual under the Eighth Amendment to the United States Constitution if it is “grossly disproportionate to the severity of the crime.” (*Rummel v. Estelle* (1980) 445 U.S. 263, 271; *Ewing v. California* (2003) 538 U.S. 11, 21.) Defendant’s sentence is not unconstitutional. He committed violent felonies that displayed, as the trial court noted, “callousness or viciousness.” He pointed a loaded gun at his wife’s head and body from only a few feet away, threatened to kill her, and threatened to bury her alive. He grabbed her by the throat and told her to open her mouth, presumably so that he could put the shotgun inside it. His abuse of his wife was part of a long cycle of endangering and threatening victims with weapons. His past strikes included firing a gun into the air during an argument with a neighbor and threatening to shoot two other neighbors. Indeed, defendant was on probation for his prior criminal threat conviction at the time of the current offenses. Accordingly, defendant’s violent criminal history and current violent felonies provide a strong justification for his lengthy sentence.

#### B. California Constitution

A sentence violates California law if “it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity.” [Citation.]” (*People v. Norman* (2003) 109 Cal.App.4th 221, 230.) In making that determination, courts consider the nature of the offense and offender, and compare the sentence with sentences imposed for more serious crimes in California and for the same crime in other jurisdictions. (*Ibid.*; see *In re Lynch* (1972) 8 Cal.3d 410, 424–427.)

### 1. *Nature of the offense and offender*

Applying these factors, we conclude that defendant's sentence is constitutional. As set forth above, defendant's substantial criminal history falls well within the spirit of the "Three Strikes" Law. He has a felony conviction for negligently discharging a firearm in 2006 (the first strike), a criminal threats conviction in 2010 (the second strike), and then serious crimes on *three* different occasions in the current case—pointing a gun at his wife and threatening to kill her on May 29, 2012, and June 10, 2012, and then trying to dissuade her from testifying in December 2012.

Moreover, the evidence demonstrates that defendant is a danger to society. He repeatedly aimed a shotgun at his wife's head and body. While he has not caused physical harm—yet—he emotionally terrorized his wife when he threatened to kill her and threatened to bury her alive. And, instead of taking responsibility for his misconduct, defendant attempted to manipulate his wife's testimony.

Given the severity of defendant's instant offenses, his recidivism, and his attempts to evade responsibility, defendant presents a serious danger to his wife and others in the community.

### 2. *Punishments in the same jurisdiction for different offenses*

Defendant complains that he was sentenced more harshly than numerous infamous criminals.

In *Regalado I*, we noted that the original 113-year sentence was far greater than typical sentences imposed for first-time offenders for making criminal threats and attempting to make criminal threats, which ranged from just under five years to nearly 25 years. The 53-year sentence we now review is more in line with these other sentences, particularly when we

consider defendant's criminal history and his status as a third strike offender. (Accord, *People v. Cline* (1998) 60 Cal.App.4th 1327, 1338 (*Cline*) [noting that it is often "illogical" to cross compare sentences for first-time offenders with sentences for third strike offenders].)

3. *Punishment for the same offense in different jurisdictions*

"Finally, a comparison of California's punishment for recidivists with punishment for recidivists in other states shows that many of the statutory schemes provide for life imprisonment for repeat offenders, and several states provide for life imprisonment without possibility of parole. California's scheme is part of a nationwide pattern of statutes calling for severe punishments for recidivist offenders. [Citation.]" (*Cline, supra*, 60 Cal.App.4th at p. 1338.)

Unlike the initial 113-year sentence that was the product of running three Three Strikes sentences consecutively, the current 53-year sentence is the product of a single Three Strike sentence in conjunction with other non-Three Strike sentences and enhancements; the current sentence is consistent with the recidivist statutes enacted in other states.

C. Trial Court Properly Followed this Court's Instructions

In urging reversal, defendant contends that the new trial judge, like the prior trial judge, "flouted this Court's authority" by imposing such a lengthy sentence. We disagree. The trial court reduced defendant's sentence by 60 years, from 113 years to life to 53 years to life. From the trial court's comments, it is clear that it considered all of the facts that gave rise to defendant's crimes, keeping in mind *Regalado I* and *Regalado II*, when it sentenced defendant.



Finally, we note that defendant offers no legal authority to support his contention that he should be resentenced to a term of no more than 10 years in prison.

## II. *Court Assessments*

The People request that we correct the assessments imposed on defendant by increasing his criminal conviction assessment to \$240 and his court operations assessment to \$320. An unauthorized sentence may be corrected at any time. (*People v. Dotson* (1997) 16 Cal.4th 547, 554, fn. 6.) Pursuant to Government Code section 70373, subdivision (a), a \$30 fine “shall be imposed” for each felony conviction as a criminal conviction assessment. (See also *People v. Lopez* (2010) 188 Cal.App.4th 474, 480.) Moreover, section 1465.8 provides for a court operations assessment of \$40 on “every conviction for a criminal offense.” (See also *People v. Woods* (2010) 191 Cal.App.4th 269, 271, 274.) Because defendant was convicted of eight offenses, his criminal conviction assessment should be \$240 and his court operations assessment should be \$320.

### **DISPOSITION**

The criminal conviction assessment imposed against defendant is increased to \$240 and the court operations assessment is increased to \$320. The clerk of the trial court is directed to correct the abstract of judgment to reflect these changes and to forward an amended abstract to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

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\_\_\_\_\_, Acting P. J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, J.  
HOFFSTADT

\_\_\_\_\_, J. \*  
GOODMAN

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