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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. LARRY ANTHONY SIKES, Defendant and Appellant.	B237328 (Los Angeles County Super. Ct. No. BA372913)

APPEAL from a judgment of the Superior Court of Los Angeles County, Jose I. Sandoval, Judge. Affirmed.

Alan E. Spears, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, and Paul M. Roadarmel, Jr., Supervising Deputy Attorney General, for Plaintiff and Respondent.

Appellant Larry Sikes was convicted by a jury of second degree robbery and possession of a controlled substance. In a bifurcated trial the jury found that appellant had suffered two strike priors. Appellant was sentenced to state prison as a "three striker" to a total term of 25 years to life. He contends that the trial court erred in not dismissing one or both of the prior strikes (see *People v. Superior Court* (*Romero*) (1996) 13 Cal.4th 497 (*Romero*)). We will affirm.

PROCEDURAL BACKGROUND

In a two count information, appellant was charged with second degree robbery (Pen. Code, § 211,[1] count 1) and possession of a controlled substance, namely PCP (Health & Saf. Code, § 11377, subd. (a); count 2). As to count 1, the information alleged that the offense was a violent felony, as defined in section 667.5, subdivision (c), a serious felony under section 1192.7, subdivision (c), and that appellant had also suffered two prior serious felony convictions within the meaning of section 667, subdivision (a)(1). For each count, the information alleged that appellant had suffered nine prior convictions within the meaning of section 667.5, subdivision (b) and two prior serious felony convictions within the meaning of sections 667, subdivision (b)–(i), and 1170.12, subdivisions (a)–(d). Appellant pleaded not guilty and denied the special allegations.

The trial court denied appellant's pretrial *Romero* motion to strike at least one of his prior strikes.

Following bifurcated trials, a jury found appellant guilty on both counts, and found true that he had committed two prior serious felonies.

The court denied probation and sentenced appellant to prison for a total term of 25 years to life, imposing that term to run concurrently as to both counts, imposed various fines and fees and awarded appellant 978 days of custody credits.

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[1] Unless indicated otherwise, all statutory references are to the Penal Code.

FACTUAL BACKGROUND

Prosecution Case

Mid-morning on June 24, 2010, Inelvia Solano waited for a bus at 39th and Vermont. A man, whom Solano later identified as appellant, stood about five feet behind her against a wall. At one point, appellant approached Solano and lightly touched her back, but then returned to the wall. Solano glanced back at appellant several times during the 15 minutes they stood near one another.

About five minutes after he returned to the wall, appellant grabbed Solano from behind by the collar. He knocked her down to the ground and put his knee on her chest and tried to strangle her with her purse strap. He hurt Solano's foot and back and, at first, she thought he might also have broken her arm. Eventually, appellant yanked Solano's purse from the handle and fled.

Solano pursued appellant and saw him enter a red Explorer, She memorized the license plate number, and wrote the number on her hand and on a card. A security guard nearby called the police.

When police officers arrived, Solano told them she had been assaulted and gave them the paper on which she had written the license plate number. She said her assailant had worn a blue sweater and a black "Lakers" cap. The officers broadcast appellant's description and the vehicle information. The license plate number was run through a national database, yielding three associated addresses. A police helicopter unit located the Explorer near one of the addresses, and appellant was soon apprehended. Inside the Explorer, officers recovered two vials of PCP from the driver's side floorboard, and a sweater and a cap matching Solano's description. At the scene Solano identified appellant, the blue sweater and black cap found in the vehicle, and the Explorer.

Defense Case

Appellant testified that he left the "Jamaica Club" on 47th and Vermont at about 2:00 a.m. on June 24, 2010. When he reached his wife's car, a red Explorer, someone struck him on the head with a pistol and robbed him. He lay unconscious until

someone woke him up and he went home. Appellant admitted having PCP in his possession before going to the club and having used it while there.

Appellant and his wife argued when he got home; he wanted her to take him to the hospital, but she had to be at work at 6:00 a.m. He drove to a friend's house and waited for the friend to come home and take him to the hospital. Appellant had a severe headache from a gash on his head. He smoked PCP to ease the pain, and slept intermittently for six or seven hours.

Appellant was awake when the police arrived without sirens or flashing lights. The officers drew their weapons, ordered appellant to put his hands outside the door, took appellant from the car and arrested him. An ambulance arrived and paramedics tended to appellant's head wound. Appellant was subsequently removed from the ambulance, and the police brought a woman to identify him. Appellant had never seen the woman before. The jacket found in the vehicle after appellant's arrest was his wife's.

Three detectives interviewed appellant at the police station. One detective told appellant he did not believe he committed the theft "because it was not his "m.o." and was "no more than a purse snatch." The detectives offered to reduce the charges to grand theft if appellant told them where he got the PCP. He said he could not do that because he was not guilty.

Appellant testified that "[y]ou might say that, 20 years [before]," he had been a career criminal. He admitted having been convicted of commercial burglary in 1981. He was 20 or 21 years old at the time, and had been found guilty of stealing from a store and sentenced to 16 months in state prison. In 1983, he was found guilty of second degree robbery and sentenced to two years in prison. Appellant was sentenced to 16 months for joyriding in a stolen car in both 1985 and in 1986, and served a concurrent sentence for a parole violation in 1987. In 1990, he was sentenced to four years in prison for armed robbery. He committed another armed robbery in 1993, for which he was sentenced to 17 years in prison. Appellant was released from prison in January 2001.

Since his release from prison in 2001, appellant had lived with his wife, to whom he had been married for 9 years. He was employed by the MTA as a driver for three

years, and received several work-related awards. After that job, appellant worked four years for a trucking company, before he was laid off and began working for temp agencies in warehouses.

DISCUSSION

Appellant maintains the trial court abused its discretion when it refused to strike at least one of his prior strikes. He argues the court focused almost exclusively on his prior criminal history and improper factors, and failed to consider the remoteness of his prior strikes or the fact that he had not committed a felony or a theft-related crime since his release from prison in 2001. We conclude otherwise.

A trial court's decision to strike a prior felony conviction is limited to those instances "in furtherance of justice." (*Romero*, *supra*, 13 Cal.4th at p. 530; § 1385, subd. (a).) The Supreme Court has "established stringent standards that sentencing courts must follow" to dismiss a strike conviction. (*People v. Carmony* (2004) 33 Cal.4th 367, 377 (*Carmony*).) When contemplating a defendant's request to strike a prior felony conviction 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 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 (*Williams*); accord, *Carmon*y, at p. 377.) The Three Strikes law "establishes a sentencing norm, . . . circumscribes the trial court's power to depart from [that] norm and requires the court to explicitly justify its decision to do so." By doing so, "the law creates a strong presumption that any sentence that conforms to these sentencing norms" is appropriate. (*Carmony*, at p. 378.) Trial courts are advised not to dismiss a career criminal's strike conviction unless the circumstances are "'extraordinary.'" (*Ibid*.; *People v. Strong* (2001) 87 Cal.App.4th 328, 338 (*Strong*).)

We review a trial court's refusal to strike a prior conviction allegation for abuse of discretion. (*Carmony*, *supra*, 33 Cal.4th at p. 374.) "[A] trial court does not abuse its discretion unless its [sentencing] decision is so irrational or arbitrary that no reasonable

person could agree with it." (*Id*. at p. 377.) Reversal is justified if the court was unaware of its discretion to strike a prior strike or refused to do so at least in part for impermissible reasons. (*Id*. at p. 378.) But where, as here, the trial court, aware of its discretion, "'balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court's ruling, even if we might have ruled differently in the first instance' [citation]." (*Ibid*.) A trial court must state its reasons for granting a *Romero* motion and dismissing a strike conviction. (§ 1385, subd. (a); *Carmony*, *supra*, 33 Cal.4th at p. 376.) It is not, however, required to state its reasons for refusing to dismiss one. This difference "reflects the legislative presumption that a court acts properly whenever it sentences a defendant in accordance with the three strikes law." (*Carmony*, at p. 376.)

On appeal, our review is "guided by two fundamental precepts." (*Carmony*, *supra*, 33 Cal.4th at p. 376.) "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 legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review."' [Citation.]" (*Id*. at pp. 376–377.) "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.]" (*Id*. at p. 377.)

By these standards, this record does not reflect the extraordinary circumstances required to overturn the trial court's decision to deny appellant's motion to strike one or more of his prior strikes. (*Carmony*, *supra*, 33 Cal.4th at p. 378; *Strong*, *supra*, 87 Cal.App.4th at p. 338.)

Here, the trial court articulated and discussed the factors relevant to its determination of the *Romero* motion. First the court discussed the circumstances and "serious" nature of appellant's present offense, and the manner in which he had physically assaulted and tried to strangle Solano before he grabbed her purse and fled.

The court also considered the nature of appellant's prior "strikes." The court lacked information about the facts of the case for the first strike in 1990. But the court noted that appellant's second strike—which took place only five weeks after he was paroled for the first strike—was an armed robbery of four victims in 1992, in which appellant pointed a gun at an employee while reaching into a cash register, demanded that victims' turn over their personal belongings, and threatened to kill the victims if they tried to "'pop'" him.

Finally, as for appellant's background, character and prospects, the court observed that appellant was 50 years old. He had a lengthy criminal record stretching "back to the age of 13, when he had a requested petition for some kind of theft, but there's no disposition indicated." That incident was followed by "a number" of juvenile petitions, as to which the court noted, it was "kind of unclear what happened." When appellant was 17 or 18 years old, there was a sustained petition for attempted theft and he had gone to the California Youth Authority. Appellant's criminal record as an adult began in 1981 when, at the age of 20, he was convicted of second degree burglary and sentenced to state prison. As to that offense, the court observed there had been "some kind of escape while he was in prison and [appellant] was later paroled."

The court noted appellant had committed numerous crimes over the years. Specifically, he was convicted of auto theft in 1985, and served time in state prison; he was sentenced to 16 months in state prison on "another theft case" in 1986; in 1987, he committed another auto theft, and a "couple" of parole violations, including a "spousal battery misdemeanor arrest which was treated as a parole violation." In 1990, appellant committed the first of two strikes for armed robbery, and was sentenced to four years in prison. In 1993, he committed a second armed robbery, to which he "pleaded[,] . . . received 17 years in the state prison and was paroled at some point." In 2006, appellant was arrested "for some kind of misdemeanor [for providing a] false I.D. to an officer." The court also noted that appellant had two misdemeanor DUI's in 2008 and 2009, and another DUI, arrest in July 2009, the outcome of which was unclear. The

court observed that "[t]hose may be misdemeanors, but, in my humble opinion, driving under the influence is a crime that threatens public safety."

The court did not discuss appellant's personal or employment history, his character or his prospects. But the court's failure to mention these particulars does not mean it failed to consider them, or that it did not understand it had the discretion to do so. In any event, we cannot say the trial court failed to consider or balance the factors appellant deemed important. Essentially, appellant invites us to reweigh the evidence and substitute our judgment for that of the trial court, which we will not do. (*Carmony*, *supra*, 33 Cal.4th at p. 377.)

Here, the circumstances evaluated by the trial court led to its conclusion that appellant did not fall outside of the letter and spirit of the three strikes sentencing scheme. The record does not show that the court based its decision on any improper factors or that it failed properly to consider the *Williams*, *supra*, 17 Cal.4th 148, 161 factors. In short, the circumstances here were not "extraordinary." And, absent extraordinary circumstances, we cannot say the court abused its discretion in refusing to strike a strike. (*Carmony*, *supra*, 33 Cal.4th at p. 378.)

We reject appellant's contention that the trial court improperly relied on material which appellant maintains should not have been included in the probation report, specifically: "four unadjudicated juvenile charges, charges as an adult under [sections] 487.2, 459, and Vehicle Code [section] 23152[, subdivision] (a), and a reference to an 'escape from prison.'"

People v. Calloway (1974) 37 Cal.App.3d 905 (*Calloway*), on which appellant relies, cautioned that "[a]rrests, juvenile dispositions short of an adjudication, and the like, can be extremely misleading and damaging if presented to the court as part of a section of the report which deals with past convictions [and] . . . at the very least a detailed effort should be undertaken to assure that the reader of the report cannot possibly mistake an arrest for a conviction." (*Id*. at p. 908.) We see no sign that the court was misled by information in the report, or that it mistook a mere arrest for a conviction. It is well established that, if information about past arrests that did not result in convictions is

included in a probation report in a manner that is not inaccurate or misleading, a court does not abuse its discretion by receiving and considering it. (*People v. Chi Ko Wong* (1976) 18 Cal.3d 698, 720–721, overruled on other grounds in *People v. Green* (1980) 27 Cal.3d 1, 28; *People v. Lutz* (1980) 109 Cal.App.3d 489, 497; *People v. Taylor* (1979) 92 Cal.App.3d 831, 833.)

Moreover, appellant's probation report does not contain the type of bare "rap sheet" information condemned in *Calloway*, *supra*, 37 Cal.App.3d 905. With a few exceptions noted by the trial court and in spite of some generalities, the report contains basic factual information, including the charge, disposition and sentence regarding appellant's criminal record. Appellant's probation report is neither inadequate nor misleading, and the court correctly recounted appellant's record as reflected therein. As for his "[j]uvenile [h]istory," the report states "no disposition is listed" for appellant's four arrests under section 487.2. The court distinguished each entry as to which no disposition was listed. There is no indication that any entry was inaccurate or unreliable. With regard to appellant's criminal history as an adult, the report identifies one arrest under section 487.1, as to which there was "[n]o information as to final disposition," and another entry for a case involving a "court remand for [section] 459." The trial court did not refer to either incident at the hearing on the *Romero* motion. On a silent record, we presume the court acted properly. In addition, it is noteworthy that none of the entries in the probation refers to a bare arrest record or police contact.

Based on information in the probation report, the court also observed there was "some kind of escape while [appellant] was in prison," and a DUI (Veh. Code, § 23152, subd. (a)) arrest that "wasn't filed," or about which it was "unclear what happened." But the court went on to elaborate that, "in [its] humble opinion, driving under the influence is a crime that threatens public safety." The probation report notes the DUI information had purposefully "been included to establish a pattern of alcohol-related behavior by this defendant" who "may have a very serious drinking problem." Both entries were relevant to the question of whether appellant posed a serious danger to society.

Appellant's criticism of the trial court's refusal to reduce his sentence is focused principally on his present offense. He attempts to minimize that offense, characterizing it as a run of the mill "'purse snatch[ ]'" unworthy of a sentence of 25 years to life. In his reply brief, he walks back his initial assertion that he "never inflicted injury on any victim," by stating that, when he assaulted and attempted to strangle Solano "in separating her from the purse, . . . it does not appear [he] used any greater force than it took to do that or inflicted a gratuitous injury." The record reflects otherwise. Recalling Solano's testimony, the court observed that appellant used "serious" force to separate Solano from her purse. After grabbing Solano by the collar and knocking her to the ground, appellant kneed her in the chest, trying to strangle her until he was able to break the handle of her purse off and flee. We cannot agree with appellant's characterization of his conduct as a minor offense. In any event, even if this crime were considered relatively minor, given appellant's overall record and recidivism, it would not, by itself, remove the felony from the Three Strikes scheme. (*Strong*, *supra*, 87 Cal.App.4th at pp. 343–344.)

Appellant also maintains that the court placed undue weight on his conduct in the 1992 armed robbery given the lack of factual information about any prior felony. Not so. As to the 1990 conviction, the court was aware that appellant used a weapon and that he was released on parole just five weeks before to the commission of the 1992 armed robbery. The court properly considered appellant's criminal record, and articulated not just the significant extent of his prior criminal activity, but also the violent nature of the present offense and at least one prior strike.

Finally, appellant asserts the court erred in denying his motion because his 1992 conviction was "remote." The fact that one of appellant's prior strikes occurred a decade before the current conviction is of little import. He cites no authority for the proposition that the age of a strike alone requires the court to depart from the three-strike sentencing scheme, and we are aware of none. (See *People v. Humphrey* (1997) 58 Cal.App.4th 809, 813 [noting that "a prior conviction may be stricken if it is remote in time," but that "[i]n determining whether a prior conviction is remote, the trial court should not simply

consult the Gregorian calendar with blinders on"].) The court was quite correct in concluding that appellant has not led a blameless life since his release from prison. (*Ibid*. [trial court abused its discretion by striking 20-year-old prior where defendant did not subsequently lead a legally blameless life].) Since 2001, appellant has committed a string of new—albeit less violent—offenses. Although those convictions were misdemeanors, it is also true that appellant chose not to live a legally blameless life. In light of this string of offenses, the court was within its rights to reject appellant's assertion that he had "committed no violations of law between his last strike conviction and the instant offense."

On this record we find no reason to conclude the trial court abused its discretion by refusing to strike a prior strike.

DISPOSITION

The judgment is affirmed.

JOHNSON, J.

We concur:

MALLANO, P. J.

CHANEY, J.