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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

NELSON VALLE,

Defendant and Appellant.

B235424

(Los Angeles County
Super. Ct. No. NA087593)

APPEAL from judgment of the Superior Court of Los Angeles County.

Rand S. Rubin, Judge. Affirmed.

Rachel Varnell, 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, Susan Sullivan Pithey and Shawn McGahey Webb, Deputy Attorneys General, for Plaintiff and Respondent.

Nelson Valle was convicted of possession of a firearm by a felon, possession of ammunition by a felon, and carrying a loaded and unregistered handgun. (Pen. Code, §§ 12021, subd. (a)(1); 12316, subd. (b)(1); 12031, subd. (a)(1).)¹ On appeal, he claims the trial court abused its discretion in denying his motion to dismiss a prior strike conviction under *People v. Superior Court (Romero)*(1996) 13 Cal.4th 497 (*Romero*). He also requests further *Pitchess*² discovery review under the procedures in *People v. Mooc* (2001) 26 Cal.4th 1216. We affirm.

FACTS

The Offenses

On December 17, 2011, at approximately 6:25 a.m., Long Beach Officer Daniel Melendez responded to a suspicious persons call involving a crowbar near 10th Street and Magnolia Avenue. The suspects were described as two Hispanic males, both wearing black clothing and one in a wheelchair.

When Officer Melendez arrived in the area, he saw Valle traveling northbound in a manual wheelchair alongside a man riding a bicycle. Officer Harrison Moore arrived at the scene shortly after Officer Melendez radioed for assistance. The officers detained and searched Valle. No weapon or unlawful contraband was found; the officers released Valle, and then left the scene. As Officer Melendez was leaving, he noticed Valle “looking around,” which piqued his interest. The officers were informed that another officer had detained the male on the bicycle and they went to that location. A short while later, Officers Melendez and Moore decided to return to the location where Valle had been detained to look for possible contraband or a weapon.

As Officer Moore returned to the location, Valle saw him and looked right at him. Valle lifted a revolver from his lap and threw it into a fenced-off grass plot. Officer Moore was only about 20 feet away from Valle when he threw the gun. Valle started to wheel away, but Officer Moore exited his vehicle and ordered Valle to return. Valle

¹ All further section references are to the Penal Code unless otherwise noted.

² *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

complied and was placed in handcuffs. An unregistered firearm, loaded with three rounds of live ammunition, was recovered from the grass plot.

The Criminal Proceedings

The People filed an amended information charging Valle as follows: possession of a firearm by a felon (count 1; §12021, subd. (a)(1)), possession of ammunition by a felon (count 2; § 12316, subd. (b)(1)), and carrying a loaded and unregistered handgun (count 4; § 12031, subd. (a)(1)). The information alleged that Valle suffered prior convictions rendering him ineligible for probation (§ 1203, subd. (e)(4)), including a prior robbery conviction in 1994 that qualified as a prior strike. (§§ 667, subds. (b)-(i); 1170.12, subds. (a)-(d).)

The trial court determined there was good cause to review Officer Moore's police personnel records. (*People v. Pitchess, supra*, 11 Cal.3d 531.) After conducting an in camera hearing, the trial court determined that no discoverable information was subject to disclosure.

The charges against Valle were tried to a jury, and the prosecution presented evidence establishing the facts summarized above. The jury returned verdicts finding Valle guilty as charged. Valle waived his right to a jury trial and admitted two prior felony convictions, including one prior strike conviction for robbery.

At the sentencing hearing, the trial court denied Valle's *Romero* motion and sentenced Valle to a total aggregate term of six years in state prison.

Valle filed a timely notice of appeal.

DISCUSSION

I. The *Romero* motion

Valle contends that the trial court abused its discretion in denying his *Romero* motion to dismiss the prior strike. We find no abuse of discretion.

When presented with a motion to dismiss a prior strike conviction, the trial court is guided by this rule: may the defendant, in light of the nature of his present crime, and his history of prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, "be deemed outside the spirit" of the Three Strikes

law, in whole or part, such that he should be treated as though he did not suffer the prior strike conviction. (*People v. Williams* (1998) 17 Cal.4th 148, 161.) A trial court's order denying a motion to dismiss a prior strike is reviewed under the deferential abuse of discretion standard. (*People v. Carmony* (2004) 33 Cal.4th 367, 374.) Under this standard, the burden is on Valle to show that the trial court's sentencing decision "was irrational or arbitrary." (*Id.* at pp. 376, 378.)

Valle asserts that trial court abused its discretion because his conviction for robbery was about 17 years old; his past criminal history, aside from his prior felony conviction, consisted of misdemeanor crimes; and the nature of his recent crimes were relatively nonviolent. Although it is true that Valle's prior strike conviction for robbery was remote, we cannot say as a matter of law that he falls outside the spirit of the Three Strikes Law. The record shows that Valle's criminal activity has continued virtually unabated since he was a young teenager. More specifically, Valle was convicted of four misdemeanors before the robbery that was found to be a strike, and committed one felony and six misdemeanors afterward. Valle committed the instant offense while he had a narcotics-related warrant. Valle's continuous disregard for the law lands him squarely within the purview of the Three Strikes law. (*People v. Gaston* (1999) 74 Cal.App.4th 310, 320.)

Valle's argument that he committed his current offenses in a "nonviolent manner" because he did not use or threaten to use the handgun does not persuade us to find the greater punishment is unwarranted. While his current crimes did not lead to injury or death, the possession of a loaded firearm created a real threat of injury within the community. Neither does Valle's reliance on *People v. Bishop* (1997) 56 Cal.App.4th 1245, 1247-1251, convince us that a different result is appropriate. In that case, Bishop was convicted of petty theft with a prior and the trial court dismissed two of three prior convictions alleged against him. The People appealed. In affirming the dismissal of those strikes, the appellate court noted that Bishop had a significant record -- six priors for which he had served prison terms. The court stated that "perhaps even this court may be of the opinion that Bishop appears undeserving of leniency," but nonetheless

concluded that the “paramount consideration” was that the trial court exercised its discretion to dismiss the strikes and it could not be considered an abuse of discretion. The fact that another appellate court found the dismissal of prior convictions was not an abuse of discretion does not compel us to decide that this trial court’s decision to deny a motion to dismiss was an abuse of discretion.

II. *Pitchess* Discovery

Valle has requested our court to review the record independently to determine if the trial court conducted a proper *Pitchess* review in camera, and made a proper ruling on the reach of discovery of the arresting officers’ personnel files. Such review on appeal is proper under the procedures set forth in *People v. Mooc, supra*, 26 Cal.4th 1216.

We have reviewed the transcript of the in camera hearing and conclude the trial court conducted the hearing properly, describing the nature of all complaints, if any, against the officers, and we find the court did not abuse its discretion in ruling that no discoverable evidence needed to be disclosed.

DISPOSITION

The judgment is affirmed.

BIGELOW, P. J.

We concur:

FLIER, J.

GRIMES, J.