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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FOUR

THE PEOPLE, Plaintiff and Respondent, v. ROBERT L. BECKWITH, Defendant and Appellant.	B276222 (Los Angeles County Super. Ct. No. MA068025)

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

Lynette Gladd Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and Michael J. Wise, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Robert Beckwith pled no contest to two drunk driving offenses and driving with a suspended license. The trial court denied defendant's motion to strike his 1995 strike conviction for burglary and sentenced him to a total state prison term of eight years. Defendant obtained a certificate of probable cause and contends on appeal that the prosecution wrongly withdrew a plea offer carrying a stipulated sentence of four years in state prison. He also contends that the trial court abused its discretion by denying his motion to strike his prior strike conviction for sentencing purposes. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant was arrested on February 20, 2016 after he was observed driving erratically. The California Highway Patrol (CHP) officer who arrested defendant testified at the preliminary hearing that he responded to a broadcast about a possibly intoxicated driver who had been traveling on the 5 and 14 freeways for nearly an hour. A Los Angeles County Sheriff's Department helicopter following the car relayed its location to the CHP officer. The officer stopped the car on a surface street in Palmdale, after observing it traveling 30 to 35 mph in a 55 mph zone. The driver of the vehicle, whom the officer identified in court as defendant, refused to take field sobriety tests or a chemical test and told the officer he believed he was near his home in Van Nuys. The officer testified that defendant had glassy eyes, slurred his speech, and smelled very strongly of alcohol.

On March 18, 2016, the District Attorney of the County of Los Angeles filed an information alleging that defendant drove under the influence (DUI) within 10 years of three other DUI offenses (Veh. Code, §§ 23152, subd. (a) & 23550, count 1), drove

under the influence within 10 years of a previous felony DUI offense (Veh. Code, §§ 23152, subd. (a) & 23550.5, subd. (a), count 2), and drove while his license was suspended or revoked due to a DUI conviction (Veh. Code, § 14601.2, count 3). The information further alleged that defendant willfully refused to submit to a chemical test pursuant to Vehicle Code section 23612; had been convicted of a serious and/or violent felony—a burglary in 1995—as defined in Penal Code[1] sections 667, subdivision (d), 667.5, subdivision (c), 1170.12, subdivision (b), and section 1192.7; and had suffered four prior prison terms within the meaning of section 667.5, subdivision (b).

Following the preliminary hearing, at which he declined a plea offer of 32 months in state prison, defendant filed a motion to strike his prior burglary conviction pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. A judge presiding over a calendar court ("the calendar court") denied that *Romero* motion at a hearing on May 25, 2016. At the same hearing, the calendar court noted that the prosecutor had offered defendant an updated plea deal of four years. The calendar court and the prosecutor, Ms. Gadson-Andrews, had the following exchange:

The Court: "The offer - - is it still four years today, Ms. Gadson?

"Ms. Gadson: Yes.

"The Court: Is that for today only or can it be kept open?

"Ms. Gadson: I will keep it open for the next date. I just extended it to today.

"The Court: We will extend it to the next day. I will set it

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

for trial. We are 0 of 20. We set our trials for the 17 of 20-day date. So why don't we have him come back on June the 7th and that will be 13 of 20. That's when we will ship you out for trial."

At the end of the hearing, the court reiterated: "All right. June 7th is 13 of 20. *The D.A.'s office has agreed to keep the offer open to that date only.* And we will see you then. Thank you."

On the morning of Tuesday, June 7, 2016, defendant appeared before a different judge, to whom the case had been assigned for trial ("the trial court"). The trial court indicated that it would be "dark this afternoon" and planned to order the parties back at 1:30 p.m. the next day, Wednesday, June 8, to begin jury selection.

The trial court also told the parties that it "want[ed] to get a summary of any motions or issues" related to the trial. The prosecutor discussed some anticipated evidentiary issues and possible bifurcation of trial on defendant's priors; she did not mention plea negotiations. Defense counsel, Mr. Browning, addressed similar issues and told the trial court he did not have any further issues to raise.

The trial court then initiated the following exchange:

"The Court: I do note that I see that - - I do see from the trial transfer memo I received from my - - my guess is this is Judge Carlos [*sic*] Chung's handwriting - - that the final offer from the prosecutor was four years summary probation, that the maximum exposure is ten years.

"Ms. Gadson-Andrews: I think that's state prison.

"The Court: I'm sorry. State prison. . . . Thank you. No, that is correct, that the prosecutor's final offer is four years state prison, that the maximum exposure on the case is ten years state prison. Mr. Browning, *I'll ask you tomorrow at 1:30 whether your*

client wishes to take advantage of that offer."

"I am not - - Based on what I've seen in the file, I'm not willing to accept an open plea to a lesser sentence than four years. If you want to go to trial, I'll hear the evidence. Obviously I cannot predict what the sentence would be because I would need to hear the evidence.

"Anything else from either party before we conclude?

"Ms. Gadson-Andrews: No.

"The Court: Mr. Browning?

"Mr. Browning: No, Your Honor."

The parties appeared the next day, June 8, at 1:30. The court gave them the opportunity to "put on the record the discussions that happened before"; it is not clear whether those discussions occurred on June 7, June 8, or both.

The prosecutor stated that defense counsel had asked her about the four-year offer. She initially told him the offer was still available, but when she spoke to her supervisor he told her that "the appropriate offer at this juncture, given that there is a jury waiting downstairs, is six years, which is high term times two." Defense counsel responded, "Yesterday, before I left Lancaster, I had an opportunity to talk to Mr. Beckwith and told him that the offer of four years was not going to get any better and that we should probably take it. It was my understanding after talking with - - off the record with the court and the prosecutor that in the afternoon this court was going to be dark, and so I told him that tomorrow - - or tomorrow afternoon when we come back, that we'll take that offer. And he - - at that time he was like - - he was upset, but he agreed to take offer [*sic*] at that time. This was yesterday."

After explaining that it was less familiar with the case than either side, the court informed defendant that it was "not willing to give an indicated . . . in terms of whether I would sentence him to four years state prison, whether I would sentence him to six years state prison, whether I'd sentence him to less, whether I'd sentence him to more." The court told defendant his "options, I believe, are as follows: The jury is ready to go. I can have the jury brought up, and we can start picking a jury. Your other option is that you can plead open to the court, and the sentence will be what it is. And so why don't you take a moment . . . ."[2]

Defense counsel, Mr. Browning, responded: "The fact of the matter is that yesterday an agreement was made. The only reason we didn't plead out yesterday was because it was almost 12:00. It was my understanding that the court was going to be dark. . . . I did have cases this morning, but if we had to come back this morning, I would have been here this morning to resolve the case. It's my understanding that the court does 1:30, and that was fine. I spoke to my client after we had our off the record conversation and called the case and told him that [t]his is as good as it gets. Let's agree to this. And so he did. He's - - he went through a period where he was like, 'this is a long time, but I was like, 'this is as good as it gets. I do not want to take a risk and go to trial and expose you to any more time.' So we came to an agreement. Even today when I told her [Ms. Gadson-Andrews] that he's taking the offer, she said, Yes. That's fine. And then five minutes later - - I'm telling him that we have to

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[2] It is not clear why the court apparently did not view the prosecution's proffered six-year deal as one of the options available to defendant. Neither the prosecutor nor defense counsel reminded the court of the six-year offer.

take this offer, this man's crying back there, and then they come back and they pull the rug out from under us."

Ms. Gadson-Andrews responded, "I'll just say it is my understanding that I asked him [Mr. Browning], have you spoken to him yet? It's my understanding that as of - - I thought he meant today. He said no. That's why I said, Hold on a second. Let me speak to my supervisor, because he wants to review this case again. So I was not aware that he [Mr. Browning] spoke to him [defendant] yesterday. I thought that was going to happen today. But if I would have received a call or e-mail saying that he's agreeing to the four years before that, I still would have gone to my supervisor and probably let him know that this case is pleading, because we're before a trial court. It's not like we're in the master calendar where this case hasn't been sent out for trial yet. We're in a different position now. So I'm in a position where I'd have to run it by my supervisor to see if they're okay with that." She added, "just like the People are free to amend the complaint at any time they think that it's appropriate that additional charges should be filed, the People are free to change the offer once, you know, it's a different set of circumstances has come about, and the different set of circumstances in this case is that it is in a trial court."

The trial court ruled that its understanding was that no plea offer had been accepted by the conclusion of the June 7 hearing. The trial court recognized that it went dark following the June 7 hearing, but noted that it had called the case sufficiently early to facilitate a plea if defendant had desired to enter one. "My understanding was that no disposition was reached, and that is why I instructed my J.A. to order the jury panel for today at 1:30." The trial court further found that the

prosecutor had not committed any misconduct.

Defendant and his counsel conferred off the record. When they returned, the trial court stated that it was "in receipt of two different waiver forms that have been signed. One is the D.U.I. advisement of rights waiver, and plea form under Vehicle Code 23152. The other is the plea form with explanations and waiver of rights for a felony." Both forms were initialed by defendant, signed by defendant and defense counsel, and dated June 8, 2016. When the court reviewed the felony plea form, it noted that it was "previously filled out," apparently "in error," as it "says that the sentence will be four years state prison. I am just going to cross this out." The court asked defense counsel if that was "a mistake when you filled out the form?" Defense counsel responded, "Well yeah. At the time it wasn't, but yes." Defense counsel agreed that the trial court could cross out the four-year sentence.

Addressing defendant, the trial court confirmed, "this will be an open plea to the court. There is no indicated sentence on this. There are no promises from the court in terms of what the sentence will be. Obviously I cannot stop a defendant who wishes to plead." Defendant stated that he understood that the court could sentence him to any sentence between probation and the maximum term of 10 years, six months, and further stated that he wished to proceed with the plea. He further confirmed that he understood that "this deal of four years state prison is off the table" and that he was "pleading open to the court." The trial court subsequently accepted defendant's plea of no contest to all of the charged offenses and his admission of all of the priors and special allegations.

At the sentencing hearing, the prosecutor requested a sentence of 10 years. Defense counsel asked the trial court to exercise its "discretion to impose the least time available." He reminded the trial court, "we were planning on pleading to the four-year offer that was put forth before us," and asserted, "we were set to take a four-year offer at one point, which was subsequently taken off the table after we had filled out the *Tahl* form,"[3] the felony plea form.

The trial court indicated that it wanted "to clarify the record, at least my understanding of the record, on this four-year offer." The court explained, "My recollection is that that offer was in place on the afternoon of the pretrial conference, and your client did not want to take it at that point. And then your client came back, not the next day, because I was dark the next day, but the day after when the jury had been ordered, and then at that point he wanted to take it, and that offer was not available at that point. And I remember this issue came up, and I found no misconduct by the District Attorney's office or by Miss Gadson-Andrews. But my recollection is that your client did not want the offer when it was available, and then he changed his mind, and then it was no longer available at that point because it had expired. Am I misremembering the facts?"

Mr. Browning responded, "We had the offer. We approached the bench. It was made clear - - it was made clear to me that that afternoon the court was going to be dark as well." The court interjected, "I do not recall that. My recollection is that, if he wanted to plead, I could have taken the plea. He didn't want the offer. You wanted to talk to him." Mr. Browning said,

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[3] *In re Tahl* (1969) 1 Cal.3d 122; see also *Boykin v. Alabama* (1969) 395 U.S. 238.

"Well, yes." The court continued, "And my recollection is that he did not want the offer at that point. He came back then on the day of the trial and wanted the offer, and the offer was not available. And so it was not that he was somehow shut out of the courthouse and not able to take advantage of that offer. My recollection is that he did not want the offer when it was available, and then when he wanted it, it was no longer available."

Mr. Browning responded, "I don't mean to contradict the court. I'm almost 100 percent sure the court went dark that afternoon when we were discussing that four-year offer. I remember we approached the bench. It was getting late, close to 12:00 P.M. I said that, well, it's more than likely he's going to take offer [*sic*]. I just need to get him prepared to take the offer, but we couldn't come back that afternoon to execute it. [¶] When we came back on the day of trial, I then asked the prosecutor if we could go ahead and execute that offer. At the time she did say yes. I'm not alleging there was any prosecutorial misconduct, but at the time I asked her, she said yes. I remember we had to - - we spent a little time getting additional plea waiver forms. We had him fill it out, and by the time we were done, that's when it was made - - that I was informed that the offer had been increased. So that's the way I remember it."

Ms. Gadson-Andrews also weighed in: "[A]s I recall, counsel did indicate that he - - that his client on the day we came back was interested in the four years, and it's my recollection I told him initially yes. I then contacted my supervisor, and I said, Well, hang on a second - - those were my exact words - - because I ran it by my supervisors, and there may be an issue. So I said, Before you speak to him [defendant], let me go talk to him [her

supervisor], unbeknownst to me at the time that he had already spoken to his client, I guess, the day before or two days before. I think that's where the discrepancy lies."

The trial court refreshed its recollection by consulting the judicial absence schedule. It stated, "[W]e had the pretrial conference in the morning on June 7, 2016. I had stated earlier that we were dark the next day and came back the following day with the jury. I was dark that afternoon. I could have taken the plea that morning. We came back on June 8th. So basically the pretrial conference was the morning of June 7th. Mr. Beckwith did not want to plead that morning. I was dark that afternoon. We came back June 8th, and that is when the plea occurred. But, as I stated, Mr. Beckwith did not want to plead on June 7th, and then when he came back, the offer was no longer available. Obviously I've found no misconduct based on that. But that is the record, and I just wanted the record to be clear that had there been a plea, I could have taken it on June 7th before leaving in the afternoon."

Before pronouncing sentence, the trial court "revisit[ed]" defendant's *Romero* motion in the interest of "doing my due diligence." The trial court indicated that it reviewed the motion independently—the calendar court previously had reviewed and denied it—and concluded that defendant's burglary conviction was not "aberrant behavior from long ago that would support me granting that motion." It found that defendant had engaged in "an ongoing pattern of criminal conduct" following the strike, committing numerous crimes, some of which involved firearms. The trial court accordingly declined to strike defendant's strike prior.

The trial court found that the high term of three years was appropriate as to count 1, DUI with three DUI convictions in the preceding 10 years. The trial court doubled that term to six years due to defendant's strike prior, but struck two of defendant's prison priors under section 1385 such that the remaining two prison priors added a total of two additional years to defendant's sentence. Thus, the trial court imposed a sentence of eight years on count 1. It imposed and stayed the same sentence on count 2, and imposed a 180-day concurrent sentence on count 3, a misdemeanor. The trial court awarded defendant a total of 156 days of presentence credit.

Defendant timely filed a notice of appeal and subsequently obtained a certificate of probable cause.

DISCUSSION

I. Plea Offer

Defendant contends that "due process and fundamental fairness require that [his] sentence be vacated" because he detrimentally relied on his understanding that the four-year plea offer would remain open until June 8. He further argues that the trial court "abdicated its responsibility to guard the integrity of the bargaining process" as a result of its "honest mistake of fact" about the events that occurred in this case. We disagree with both contentions.

"Plea negotiations and agreements are an accepted and 'integral component of the criminal justice system and essential to the expeditious and fair administration of our courts.' [Citations.]" (*People v. Segura* (2008) 44 Cal.4th 921, 929.) "[T]he process of plea negotiation 'contemplates an agreement negotiated by the People and the defendant and approved by the court. [Citations.] Pursuant to this procedure the defendant

agrees to plead guilty [or no contest] in order to obtain a reciprocal benefit, generally consisting of a less severe punishment than that which could result if he were convicted of all offenses charged. [Citation.] This more lenient disposition of the charges is secured in part by prosecutorial consent to the imposition of such clement punishment [citation], by the People's acceptance of a plea to a lesser offense than that charged, either in degree [citation] or kind [citation], or by the prosecutor's dismissal of one or more counts of a multi-count indictment or information. [Citations.]"[4] (*Id*. at pp. 929-930.)

A plea agreement between the prosecution and defense is not effective unless and until it is approved by the court. (*In re Alvernaz* (1992) 2 Cal.4th 924, 941.) Either the defendant or the prosecutor may withdraw from a plea bargain before the court approves it. However, the defendant may be entitled to enforcement of the bargain notwithstanding the prosecutor's withdrawal therefrom if he or she detrimentally relied upon the plea bargain before the prosecutor withdrew. (*People v. Rhoden* (1999) 75 Cal.App.4th 1346, 1354.) "'A defendant relies upon a [prosecutor's] plea offer by taking some substantial step or accepting serious risk of an adverse result following acceptance of the plea offer. [Citation.] Detrimental reliance may be demonstrated where the defendant performed some part of the bargain. [Citation.] For example, a defendant who provides beneficial information to law enforcement can be said to have relied to his detriment. [Citation.] Reliance may not be shown "by the mere passage of time." [Citation.] Also, it may not be

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[4] A defendant also may choose to "plead open," or plead guilty or no contest absent a promised reciprocal benefit from the prosecution.

shown where the defendant stopped preparing his defense, absent a showing of specific prejudice. [Citation.] Nor may detrimental reliance be shown by the prospect of a longer sentence. [Citation.]' [Citation.]" (*Id.* at p. 1355, emphases omitted.) Waiver of the right to remain silent, paying the fee to take and submitting to an agreed-upon polygraph test collectively constitute detrimental reliance. (*In re Kenneth H.* (2000) 80 Cal.App.4th 143, 149.) Completing a change of plea form, without more, does not. (*People v. McClaurin* (2006) 137 Cal.App.4th 241, 250 (*McClaurin*).)

Defendant argues that the prosecutor promised that the four-year offer would remain open until June 8, and that he detrimentally relied on that promise by waiting until the afternoon of June 8 to plead. He asserts that "[t]he only reason [he] did not enter a change of plea on June 7th was that the court told him that the offer would be open at 1:30 p.m. the following day, and that the court would hear the matter then." This assertion is not supported by the record. The prosecutor and the calendar court originally advised defendant that the offer would be held open only until his next court date. At that June 7 hearing, defendant gave no indication of any intent to plead, either before or after the court brought up the four-year offer. On June 8, defense counsel told the court that he talked to defendant before he left the Lancaster courthouse—i.e., after the June 7 hearing—and only then convinced him to plead. Defense counsel later reiterated this at the sentencing hearing, when he agreed with the court's recollection "that, if he wanted to plead, I could have taken the plea [on June 7]. He didn't want the offer. You wanted to talk to him." On June 8, defense counsel also told the court that he told defendant the day before that "the offer of four

years was not going to get any better," indicating that he understood and relayed to defendant that it was possible for the offer to change.

Even if the court's comment that it would "ask [defense counsel] tomorrow whether your client wishes to take advantage of that offer" operated to extend the offer to that time, which the prosecutor's silence arguably suggests, there is no evidence that defendant detrimentally relied on that representation. The only possible action defendant identifies as detrimental reliance is his purported execution of a plea agreement on June 7. The record is unclear as to when defendant actually executed the agreement. Although the felony plea waiver form mentioned a four-year sentence, both plea waiver forms are dated June 8, and comments counsel made at June 8 and sentencing hearings suggest that the forms were executed on the morning of June 8. The prosecutor represented, and defendant did not dispute, that he did not communicate his intention to accept the offer to her on June 7.

Regardless of when defendant signed the forms, however, the mere act of completing them did not amount to detrimental reliance. (*McClaurin*, *supra*, 137 Cal.App.4th at p. 250.) In *McClaurin*, the defendant waived time for the preliminary hearing and completed a change of plea form changing his plea from not guilty to no contest. (*Ibid.*) The trial court found that defendant's time waiver demonstrated detrimental reliance on the prosecutor's previous plea offer and specifically enforced the bargain over the prosecutor's objection. (*Id.* at p. 246.) On appeal, the Attorney General argued that the time waiver did not constitute detrimental reliance on the plea offer. (*Id.* at p. 248.) The *McClaurin* court agreed, concluding that the time waiver of

less than one month did not alone amount to detrimental reliance. (*Id.* at p. 249.) The court also considered whether defendant may have suffered detriment by completing the form in reliance on the prosecutor's previous offer. The court concluded that completing the form also did not constitute detrimental reliance, because the defendant did not enter the form into the court record, make any admissions in open court, or otherwise materially shift his position. (*Id.* at p. 250.)

The same is true here. Even if defendant completed the form before the prosecutor revised the four-year offer to a six-year offer, there is no indication that defendant suffered any detriment as a result. He did not make any admissions in open court or put the form on the record until he decided to plead open. At the time he completed the form, he still could have proceeded to trial, or attempted to continue the plea negotiations; completing the form in no way incriminated him, cost him anything, or restricted his options.

Defendant contends that his case is analogous to *People v. Goodwillie* (2007) 147 Cal.App.4th 695 (*Goodwillie*), a case the Attorney General does not address in its response brief. In *Goodwillie*, the pro. per. defendant told the court he was willing to accept the prosecution's offer of five-and-a-half years if he could serve the time at 50 percent credit. (*Goodwillie*, *supra*, 147 Cal.App.4th at p. 731.) The prosecution and trial court both mistakenly told defendant that he would have to serve 85 percent of the sentence. (*Ibid.*) The defendant declined the offer, proceeded to trial, and was convicted. At the sentencing hearing, the trial court realized that the defendant in fact was eligible to receive 50 percent credit. (*Id.* at p. 732.) The Court of Appeal concluded that the prosecutor and court had a duty not to

misinform the defendant about his eligibility for conduct credits. It further concluded that the misinformation prejudiced the defendant by causing him to reject an offer that was more favorable than the sentence he received after trial and depriving him of the opportunity to negotiate an alternative bargain. (*Id.* at p. 733.)

Defendant concedes that any misunderstanding about the continued availability of the four-year offer "did not cause him to reject the offer—it merely delayed his acceptance," but contends that the prejudicial effect was the same as it was in *Goodwillie*, because "[i]t brought the process to a halt, and induced [defendant] to postpone his acceptance until the following day, when he was told that it was too late." *Goodwillie* is distinguishable. There, the defendant's rejection of the offer was plainly motivated by the misinformation he received; he stated on the record that he would have accepted the offer if he were eligible to serve his sentence at 50 percent credit. (*Goodwillie*, *supra*, 147 Cal.App.4th at pp. 731, 736.) Here, in contrast, the prosecutor and calendar court advised defendant that the offer would remain open until his June 7 court date, and defendant made no effort to accept the offer before then. Defendant's further delay in accepting the offer does not appear to have been motivated by the court's assertion (and prosecutor's subsequent silence) that the offer would remain open. Rather, his counsel represented to the court that defendant was "upset" about what he perceived to be a lengthy offer and had to be persuaded to take it.

Defendant also argues that the trial court did not properly "guard the integrity of the bargaining process" because it misremembered the events of June 7 and did not consult the

court reporter's notes to refresh its recollection. In light of this mistake, he continues, the court did not properly exercise the discretion it has over the plea bargaining process.

"[A] trial court's approval of a proposed plea bargain must represent an informed decision in furtherance of the interests of society." (*In re Alvernaz*, *supra*, 2 Cal.4th at p. 941.) The trial court's ruling that the four-year offer was no longer on the table was made only after the trial court consulted with both parties and considered their recollection of events. The trial court erroneously stated that the June 7 hearing was on a Monday and was followed by a full dark day, but we cannot infer from the record before us that the court's other recollections, namely that defendant had not accepted any offer on June 7 and that the court could have taken the plea that day if he had, were erroneous. Consulting the reporter's transcript would have revealed that the court stated on June 7, "I'll ask you tomorrow at 1:30 whether your client wishes to take advantage of that offer," but would not have reflected any of the off-the-record conversations during which parties represented the offer was accepted and withdrawn. Moreover, the court concluded from the information before it that no plea bargain had been reached; there was no plea agreement for the court to approve. The court did not abuse its discretion or impugn the integrity of the bargaining process.

II. *Romero* Motion

Defendant filed a *Romero* motion requesting that the trial court strike his strike offense, a 1995 burglary conviction. Both judges who considered his motion—the calendar court and the trial court—denied it. Defendant contends that denying the motion was an abuse of discretion, because his "exasperating

criminal history" is "characteristic of addicted persons" and does not "indicate that he is a serious threat to society." He further argues that the trial court failed to consider the circumstances of the present offenses, that his burglary conviction was remote in time, and that counting the burglary conviction as a strike in connection with his current "minimally-violent, alcohol-related" offenses was "tantamount to punishing him twice for the 1995 offense." We find no abuse of discretion.[5]

Section 1385, subdivision (a), permits a trial court to dismiss a criminal action "in furtherance of justice." This power to dismiss an action "includes the lesser power to strike factual allegations relevant to sentencing, such as the allegation that a defendant has prior felony convictions." (*Romero*, *supra*, 13 Cal.4th at p. 504.) In *Romero*, the Supreme Court held that section 1385, subdivision (a), is applicable to cases brought under the Three Strikes law (§§ 667, subds. (b)-(i), 1170.12). (*Romero*, *supra*, at pp. 504, 529-530.)

In ruling on a defendant's *Romero* motion, the trial 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 . . . spirit [of the Three Strikes law], 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*).) Because the Three Strikes law

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[5] We find no abuse of discretion by either court that denied the motion. Like the trial court, whose ruling we discuss in the text, the calendar court emphasized the lengthy and continuous nature of defendant's criminal history and expressed concern "for the public safety" due to defendant's numerous DUI convictions.

"establishes a sentencing norm" and "carefully circumscribes the trial court's power to depart from this norm [by] requir[ing] the court to explicitly justify its decision to do so," "the law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper." (*People v. Carmony* (2004) 33 Cal.4th 367, 378.) "In light of this presumption, a trial court will only abuse its discretion in failing to strike a prior felony conviction allegation in limited circumstances." (*Ibid.*) "'[W]here the record demonstrates that the trial court 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.'" (*Ibid.*, quoting *People v. Myers* (1999) 69 Cal.App.4th 305, 310.) We overturn the court's ruling only if it falls outside the bounds of reason under the applicable law and relevant facts. (*Williams*, *supra*, 17 Cal.4th at p. 162.)

Contrary to defendant's assertion that the trial court did not consider the circumstances of the present offense, the trial court stated that it considered the probation and sentencing report, the prosecutor's sentencing memorandum, and "materials provided by the defendant." The probation report is the only one of those items in the appellate record; it includes a summary of the facts and circumstances underlying the present offense. The trial court also indicated its familiarity with the facts by observing that "the facts of this case are egregious, much more serious than a normal D.U.I." Indeed, defendant drove erratically on two highly trafficked freeways for nearly an hour, necessitating the use of a law enforcement helicopter, while his license was still suspended due to the most recent of his six previous DUI convictions.

The trial court reasonably found that defendant engaged in an "ongoing pattern of criminal conduct between the time of the

strike prior and the present conviction." Between the 1995 burglary and current incident, defendant suffered 13 additional convictions. While some of those convictions were for nonviolent misdemeanor offenses such as driving without a license (Veh. Code, § 12500, subd. (a)) and driving with a suspended license (Veh. Code, §§ 14601.2, subd. (a), 14601.5, subd. (a)), others were more serious—two separate felony convictions for unlawful possession of a firearm (§ 12021, subd. (a)(1)), a felony conviction for possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)), one felony and multiple misdemeanor DUIs (Veh. Code, § 23152, subds. (a) & (b)), and a misdemeanor conviction for fighting in a public place (§ 415, subd. (a)). Defendant notes that "[o]nly the two firearms offenses, a drug offense, and a DUI were felonies." Three of those felonies, however, were among defendant's most recent offenses; defendant's most recent offense was a felony DUI for which he was sentenced to four years in state prison. Thus, rather than demonstrating that defendant "is an alcoholic whose offenses are decreasing in seriousness as he grows older," defendant's criminal history supports the court's conclusion that "state prison sentences have not deterred the defendant's criminal conduct" and that the strike prior was not "aberrant behavior from long ago that would support . . . granting that [*Romero*] motion." The court did not abuse its discretion in denying the motion.

DISPOSITION

The judgment of the trial court is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.