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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MARK ANTHONY DAVIS,

Defendant and Appellant.

2d Crim. No. B271450
(Super. Ct. No. 2015007484)
(Ventura County)

Following a bench trial, the trial court found Mark Anthony Davis guilty of being a felon in possession of a firearm and ammunition (Pen. Code,¹ §§ 29800, subd. (a)(1), 30305, subd. (a)(1)), and found true allegations that he had suffered a prior “strike” (§§ 667, subds. (c)(1), (e)(1), 1170.12, subds. (a)(1), (c)(1)) and served five prior prison terms (§ 667.5, subd. (b)). At sentencing, the court dismissed the prior prison term allegations (§ 1385) but denied Davis’s motion to strike the prior strike pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*). He was sentenced to prison for six years—the

¹ All statutory references are to the Penal Code.

upper term doubled—for possessing a firearm. The trial court stayed a 32-month sentence for possessing ammunition. (§ 654.) Davis contends that the court erred by not striking the strike. We affirm.

FACTS

Officer Abel Alaniz responded to a call about a fight at a restaurant in Oxnard. He saw Davis with a group of five other males. Davis got up and walked out of the rear of the restaurant.

As the officer approached, Davis walked behind a sport utility vehicle (SUV) outside the officer's field of vision. Davis made "a 180" and headed back towards the rear of the vehicle, where he remained for about four seconds. The officer heard "the very distinct sound of metal being racked or hitting the ground." Davis emerged from behind the SUV. As Davis was walking past the officer, the officer "ordered him to the ground." The officer found a loaded .22-caliber handgun underneath the SUV's rear passenger-side tire where Davis had been standing. In a recorded phone conversation from jail, Davis said that if he were younger he would have run "and thrown it" but instead he "just stopped by the van," "sat that shit down—and came out and started walkin[g]."

DISCUSSION

Davis contends that the trial court erred by denying his *Romero* motion. A court's decision not "to dismiss or strike a prior conviction allegation is subject to review under the deferential abuse of discretion standard." (*People v. Carmony* (2004) 33 Cal.4th 367, 374.) "[The] court does not abuse its

discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.” (*Id.* at p. 377.) Because “the three strikes law . . . establishes a sentencing norm, . . . carefully circumscribes the trial court’s power to depart from this norm[,] and requires the court to explicitly justify its decision to do so” (*id.* at p. 378), “the law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper.” (*Ibid.*) The denial of a *Romero* motion will be an abuse of discretion only “in limited circumstances,” such as “where the trial court was not ‘aware of its discretion’ to dismiss [citation], or where the court considered impermissible factors in declining to dismiss [citation].” (*Ibid.*)

Here, the trial court explained that it was denying Davis’s *Romero* motion because “[his] prior convictions are numerous,” he “was on POST release offender supervision when he committed the present crime,” “[his] performance on either probation or parole was unsatisfactory,” and “the present offense involved a firearm similar to the prior strike offense.” The trial court had discretion to grant the motion and provided valid reasons for denying it. There was no abuse of discretion.

Davis argues that he “fell outside the spirit of the Three Strikes Law” because his prior strike “was more than ten years old at the time that he committed the instant offense” and involved “an incident where . . . no one was injured.” He asserts that he has suffered only three convictions since being released from custody for the strike offense—“two for drug possession, and one for resisting an officer”—and that all of his post-strike

offenses were for drug-related offenses that are currently treated as misdemeanors.

Davis's prior strike involved an incident in which he "got into a dispute with . . . a security guard at a bar" and "pulled a loaded .32 caliber handgun from his waistband." He "pointed it at the bar manager . . . and then placed the gun at [the security guard's] temple." Three months after being paroled from prison for that offense, he started an altercation with a person on the street who did not want to talk to him. Davis said, "I'm Ducky. I'm from Colonia. I carry a Tek 9." He "appeared to reach for a gun and stated, 'I know where you live now. I know who you are, and I'll come back for you.'" Sixteen months after his release from prison for that offense, he was stopped on the street and was found carrying cocaine, methamphetamine, and a three-inch knife he admitted he was not supposed to have. Thirteen months after being released from prison for that offense, he committed the instant one.

Although Davis states that "[i]n no offense did he cause injury to anyone," his post-strike record is far from nonviolent. Moreover, he has been in and out of prison for decades. The trial court was well within its discretion in determining that his unabated recidivism placed him squarely within the spirit of the Three Strikes Law.

DISPOSITION

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Gilbert A. Romero, Judge
Superior Court County of Ventura

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