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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. JAMARAE LAMONZE KEYES, Defendant and Appellant.	B270951 (Los Angeles County Super. Ct. No. BA437331)

APPEAL from a judgment of the Superior Court of Los Angeles County. Craig Elliott Veals, Judge. Affirmed.

Renee Rich, 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, Kenneth C. Byrne and Andrew S. Pruitt, Deputy Attorneys General, for Plaintiff and Respondent.

Jamarae Lamonze Keyes (appellant) contends his sentence in case No. BA437331 was improperly doubled pursuant to the "Three Strikes" law because he did not receive proper *Yurko*[1] advisements before waiving his right to trial on a prior serious and/or violent conviction. We find no error and affirm.

FACTS

Case No. BA433324

In case No. BA433324, appellant was charged with two counts of second degree robbery (Pen. Code, § 211).[2] The information alleged that appellant had two prior convictions. The first conviction for first degree burglary (§ 211) in case No. YA069882, which qualified as a serious and/or violent felony within the meaning of the Three Strikes law (§§ 667, subd. (d), 1170.12, subd. (b). The second conviction was for being a felon or person addicted to drugs in possession of a firearm (former § 12021) in case No. YA072801. The information also alleged that appellant served a prior prison term for the convictions in case Nos. YA069882 and YA072801, which qualified him for the enhancement mandated by section 667.5, subdivision (b). Additionally, it was alleged that an executed sentence had to be served in state prison because appellant had a prior serious and/or violent felony. (§ 1170, subd. (h)(3).)

Appellant posted bail.

On May 8, 2015, appellant appeared in court for a pretrial hearing. The trial court granted defense counsel's request to hold

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[1] See *In re Yurko* (1974) 10 Cal.3d 857, 863 (*Yurko*).

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

a bifurcated trial on the prior conviction and prison term allegations.

At trial, on the day the victims were scheduled to testify, appellant failed to appear in court. The trial court exercised its discretion under section 1043 to proceed with trial in appellant's absence. Later that same day, the trial court ordered the bond forfeited and set bail. On May 18, 2015, the jury returned guilty verdicts as to both robbery counts. The matter proceeded to a jury trial on the priors, and the jury returned a verdict in which it found the alleged priors to be true.

Appellant was present for sentencing on September 30, 2015. On count 1, he was sentenced to 12 years calculated as follows: the midterm of three years, which was doubled pursuant to the Three Strikes Law, plus an additional five years under section 667, subdivision (a)(1), plus an additional year under section 667.5, subdivision (b). On count 2, appellant was sentenced to two years based on one-third the midterm of one year doubled under the Three Strikes law. The trial court ordered the sentences to run consecutively.

Case No. BA437331

In case No. BA437331, appellant was charged with one felony count of failure to appear in case No BA433324 while on bail. (§ 1320.5.) According to the information, appellant had two prior convictions. The first was a conviction for first degree burglary (§ 211) in case No. YA069882, which qualified as a serious and/or violent felony within the meaning of the Three Strikes law (§§ 667, subd. (d), 1170.12, subd. (b)). The second was a conviction in case No. YA072801 for being a felon or person addicted to drugs in possession of a firearm (former § 12021). The information also alleged that appellant served a prior prison

term for the convictions in case Nos. YA069882 and YA072801, which qualified him for the enhancement mandated by section 667.5, subdivision (b).[3] Finally, it was alleged that an executed sentence had to be served in state prison because appellant had a prior serious and/or violent felony (§ 1170, subd. (h)(3)).

He pleaded not guilty and the matter proceeded to trial in January 2016. After closing arguments, and after the jury indicated it had reached a verdict on the substantive offenses, the trial court informed counsel there was "an issue with respect to prior allegations that we do need to resolve. That is, determine whether [appellant] wishes to waive his right to trial by jury with respect to the prior[s][.]" Defense counsel indicated that appellant planned to waive his right, at which point the trial court instructed the prosecutor to take the waiver.

The following colloquy ensued:

"[PROSECUTOR]: Mr. Keyes, in case BA437331, it is alleged pursuant to [] section[s] 1170[, subdivision] (h)(3), 667.5[, subdivision] (c), and 667[, subdivision] (d), that you suffered a prior felony conviction of a serious or violent felony in case YA069882 for a violation of [] section 459 in the first degree, conviction date July 15th, 2008, out of Los Angeles Superior Court. [¶] . . . [¶] It is further alleged that you went to prison on that case. Do you understand the allegation that's against you?

"[APPELLANT]: Yes[.]

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[3] The information alleged that for purposes of a former section 12022.1 enhancement, appellant was on bail in case No. BA433324 when he failed to appear in case No. BA437331. After trial, the former section 12022.1 allegation was stricken by the trial court pursuant to section 1385.

"[PROSECUTOR]: You have the right to have this same jury that heard your trial to determine those allegations. You'd have the same rights that you had at trial: the right to remain silent, the right to confront and cross-examine witnesses, the right to use the subpoena power of the court, the right to present a defense. [¶] Do you waive and give up all of those rights with regard to the allegation that you went to prison on a serious or violent felony?

"[APPELLANT]: Yes[.]

"[PROSECUTOR]: And further, do you admit that you went to prison in case [No.] YA069882?

"[APPELLANT]: Yes[.]

"[PROSECUTOR]: And do you admit that that is a serious or violent felony pursuant to section 1170[, subdivision] (h)(3)?

"[APPELLANT]: Yes[.]

"[PROSECUTOR]: Counsel join?

"[DEFENSE COUNSEL]: Join.

"[PROSECUTOR]: The People join.

"[TRIAL COURT]: The Court accepts the jury trial waiver.

"[PROSECUTOR]: And the admission?

"[TRIAL COURT]: And the admission. Yes. Yes."

The jury returned a guilty verdict on the charged offense.

Appellant was sentenced to a state prison term of 16 months calculated based on eight months (one-third the middle term of 24 months) doubled pursuant to the Three Strikes law. That 16-month sentence was ordered to be consecutive to his 14-year sentence in case No. BA433324.[4]

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[4] According to appellant, the trial court did not impose a prior prison enhancement because one had already been imposed in case No. BA433324.

This appeal followed.

DISCUSSION

I. *Yurko* Rights.

In *Boykin v. Alabama* (1969) 395 U.S. 238 (*Boykin*), the Unites States Supreme Court explained that when a defendant pleads guilty to a criminal offense, he or she waives the privilege against compulsory self-incrimination, the right to jury trial, and the right to confront accusers. For a waiver of those rights to be valid under the due process clause, "'it must be "an intentional relinquishment or abandonment of a known right or privilege." [Citation]'" (*Id*. at p. 243.)

Soon after *Boykin* was handed down, our Supreme Court held that the rights to confrontation and a jury trial as well as the right against self incrimination "must be specifically and expressly enumerated for the benefit of and waived by the accused prior to acceptance of his guilty plea." (*In re Tahl* (1969) 1 Cal.3d 122, 132.) About five years later, our Supreme Court decided *Yurko, supra,* 10 Cal.3d at p. 863 and held that before a trial court accepts a defendant's admission that he or she has suffered a prior conviction, the accused must be told "that an admission of the truth of an allegation of prior convictions waives, as to the finding that he has indeed suffered such convictions, the same constitutional rights waived as to a finding of guilt in case of a guilty plea."[5] (*Ibid.*) As a judicially declared rule of state criminal procedure, *Yurko* went on to hold that "an

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[5] Neither the federal nor California Constitutions require a jury trial on a prior conviction allegation. At most, due process necessitates notice and an opportunity to litigate the matter. But a California defendant nonetheless has a right to a jury trial as specified in section 1025. (*People v. Mosby* (2004) 33 Cal.4th 353, 360 (*Mosby*); *People v. Cross* (2015) 61 Cal.4th 164, 172–173.)

accused, prior to the time the [trial court] accepts his admission of an allegation of a prior criminal conviction or convictions, is entitled to be advised: (1) that he may thereby be adjudged an habitual criminal . . . . (2) of the precise increase in the term or terms which might be imposed, if any, in the accused's case . . . . ; and (3) of the effect of any increased term or terms of imprisonment on the accused's eligibility for parole. The failure to so advise an accused in the enumerated instances will constitute error which, if prejudice appears, will require the setting aside of a finding of the truth of an allegation of prior convictions." (*Id.* at p. 864, fn. omitted.)

Yurko error involving *Boykin-Tahl* admonitions is reviewed to determine whether an admission was voluntary and intelligent under the totality of the circumstances. (*People v. Howard* (1992) 1 Cal.4th 1132, 1175; *Mosby*, *supra*, 33 Cal.4th at p. 361.) In contrast, *Yurko* error involving the advisements required by state criminal procedure must be upheld unless there is prejudice. (*People v. Walker* (1991) 54 Cal.3d 1013, 1023 (*Walker*), overruled on other grounds in *People v. Villalobos* (2012) 54 Cal.4th 177, 183.) "'A showing of prejudice requires the appellant to demonstrate that it is reasonably probable he would not have'" waived his rights if the state-based *Yurko* advisements were given. (*Walker*, *supra*, 54 Cal.3d at p. 1023.)

II. Appellant Knowingly and Intelligently Waived His Rights Prior to Admitting the Prior Conviction.

Appellant argues that the totality of the circumstances fail to establish that he knowingly and voluntarily waived his right to a trial on the truth of the alleged prior strike conviction because: he was not informed he could have the trial court rather than a jury determine the matter; he was not advised that the

information alleged he had suffered a prior strike conviction; and he was not advised that his base term would be doubled under the Three Strikes law, and that section 667, subdivision (c)(5) would limit his prison conduct credits to no more than one-fifth of the total term if imprisonment imposed. We disagree.

Importantly, "'a defendant's prior experience with the criminal justice system' is, as the United States Supreme Court has concluded, 'relevant to the question [of] whether he knowingly waived constitutional rights.' [Citation.] That is so because previous experience in the criminal justice system is relevant to a recidivist's "knowledge and sophistication regarding his [legal] rights." [Citations.]'" (*Mosby*, *supra*, 33 Cal.4th at p. 365, fn. omitted.) Previously, appellant was present during the pretrial conference in case No. BA433324, so he knew he could request a bifurcated trial. He was also present for sentencing. Thus, he knew that he had a bifurcated trial in 2015 in which a jury found the prior conviction allegation to be true, and he knew the effect of that finding was a doubling of his base term under the Three Strikes law.

In this case, appellant was told he had the right to have the allegation that he suffered a prior serious and/or violent felony conviction decided by the same jury that decided the substantive offenses. Further, he was represented by counsel and knew what happened in case No. BA433324.

Based on the foregoing, we conclude appellant knew he could request a trial on a prior, and he also knew the most significant penal consequence of admitting the conviction. Under the totality of the circumstances, appellant fully understood his right to demand a trial on the truth of the alleged prior conviction. Moreover, because the prior conviction had recently

been found true by a jury in case No. BA433324, it is not probable that an advisement regarding the penal consequences would have resulted in appellant demanding a trial.

Even if he knowingly and intelligently waived his right to a trial, appellant urges use to reverse his sentence on the alternative ground that he admitted the prior term but not the prior conviction. A review of the record belies his claim. He admitted he suffered a prior conviction for a serious or violent felony. Though he suggests the admission was only for purposes of section 1170, subdivision (h)(3), this attempted parsing does not aid him. Section 1170, subdivision (h)(3) and the Three Strikes law (§§ 667, subd. (d), 1170.12, subd. (b)) specifically refer to serious felonies described in section 1192.7 and violent felonies described in section 667.5. Regardless of the statute the prosecutor referenced in connection with the requested admission, appellant admitted a prior conviction that qualified as a serious and/or violent felony under those two statutes, which obviated the need for trial.

DISPOSITION

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.