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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JIMMY LEE TARNOWSKI,

Defendant and Appellant.

B245325

(Los Angeles County  
Super. Ct. No. KA097452)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Robert M. Martinez, Judge. Affirmed.

Jimmy Lee Tarnowski, in pro. per.; and Ava R. Stralla, under appointment by the  
Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Jimmy Lee Tarnowski pleaded no contest to one count of possession of a controlled substance (methamphetamine), in violation of Health and Safety Code section 11377, subdivision (a), and was sentenced to eight years in state prison. He filed a timely notice of appeal. We appointed appellate counsel to represent Tarnowski. After examining the record, counsel filed an opening brief raising no issues and asking this court to independently review the record. On May 14, 2013, we advised Tarnowski he had 30 days in which to personally submit any contentions or issues he wished us to consider.

Tarnowski filed a supplemental brief challenging his strike conviction and his prior prison term enhancements, and requesting that his sentence be modified to the midterm. His arguments are without merit, and we affirm the judgment.

### **BACKGROUND**

An information filed May 30, 2012 charged Tarnowski with one count of felony possession of a controlled substance, methamphetamine, in violation of Health and Safety Code section 11377, subdivision (a). The information also alleged that Tarnowski had three prior convictions for first degree burglary (Pen. Code, § 459<sup>1</sup>) and three prior convictions for robbery (§ 211), which were deemed serious or violent felonies. (§§ 1192.7 & 667.5, subd. (c).) These prior convictions also qualified as prior strikes. (§§ 1170.12, subds. (a)–(d) & 667, subds. (b)–(i).) Tarnowski also had prior prison priors (§667.5, subd. (b)) and felony convictions which qualified as no-probation priors. (§ 1203, subd. (e)(4).)

Tarnowski rejected an offer of four years imprisonment in open court and pleaded not guilty. A jury trial began on Friday, October 19, 2012. A police officer testified that he executed a traffic stop after Tarnowski ran a stop sign in a pickup truck. The officer found methamphetamine in a balled-up piece of paper on the ground outside of the driver's door. When the officer reviewed his in-car surveillance video, he saw the paper fall from Tarnowski's lap when he exited the car. The jurors saw the video. Inside the

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise indicated.

car on the center of the bench seat was a notebook with pages the same size and type of paper as the paper with the methamphetamine, and two baggies of methamphetamine were hidden in the seat on the passenger side.

On October 22, 2012, Tarnowski filed a change of plea form, pleading no contest to the charge of possession of methamphetamine. Tarnowski admitted the prior convictions. The court asked Tarnowski if he wanted to enter an open plea with the understanding that the maximum term was 12 years. Tarnowski conferred with his attorney and said yes. The prosecutor advised Tarnowski about the consequences of his plea, and Tarnowski answered yes when the prosecutor asked him whether he understood the consequences. The prosecutor also advised Tarnowski that by pleading to the charge and the allegations, “you are potentially looking at 25 to life; but the judge has guaranteed you that . . . he . . . won’t sentence you to anymore than 12 years,” and Tarnowski said he understood. The prosecutor asked Tarnowski’s counsel if he stipulated to the factual basis of the plea based on the arrest and probation reports and the preliminary hearing transcript, and counsel answered yes. Tarnowski pleaded no contest to the possession charge.

The prosecutor read Tarnowski’s strike convictions and asked him whether he admitted them. After conferring with his attorney, Tarnowski said, “This is for sentencing purposes. Yes, I’ll go ahead and plead guilty but I don’t have all those strikes.” The prosecutor responded that he had provided a strike package under section 969b and offered the package for Tarnowski and his counsel to review. After conferring with his attorney, Tarnowski stated: “Okay. Anyway, I’ll agree to it.” The prosecutor stated: “I am not going to have him agree just blindly to something that he believes it’s not him.” Tarnowski then said: “Well, I pleaded guilty in 1988. I pleaded guilty to three counts of robbery and that was it. And then ’83 was the residential burglary. Anything more is not true.” The court asked whether Tarnowski wanted to plead no contest, and defense counsel said, “Yes, your honor. That’s what he’s indicating at this time.” The prosecutor asked again whether Tarnowski admitted the six prior strike convictions, and Tarnowski answered, “No contest.”

Tarnowski and his counsel conferred again after the prosecutor asked Tarnowski to admit to prison priors. The prosecutor read the priors, and Tarnowski admitted the prison priors. Counsel joined in the waivers and stipulated to a factual basis for the plea. The court found that Tarnowski's plea was freely and voluntarily made and he had knowingly and intelligently waived his constitutional rights regarding the alleged priors. The court found the priors to be true, and found there was a factual basis for the plea.

The court stated: "Mr. Tarnowski, your sentencing today is only partially influenced by the charge that you pled guilty to, and the rest of it is your past catching up with you. It's almost crazy to impose such a significant sentence on what is relatively minor in comparison to some of the crimes you've committed and, of course, some of the even more serious crimes that others commit." The court denied probation, and sentenced Tarnowski to the high term of three years, doubled to six as the strike prior. In addition, the court imposed two one-year prison priors for a total commitment of eight years (minus credits), and fines and fees. The court found "the sentence it has imposed is commensurate with the charge and his past history. The case is being dealt as a second strike case, and all serious felonies are stricken with the exception of a [section] 211 in case no. A097565." The court added: "Just so the record is clear, I'm looking at a document here dealing with your 1988 cases, and you did receive a term of nine years eight months for a number of robberies . . . ." Tarnowski asked whether he could get a court order for a copy of his strike packet, and the court told him to ask his attorney to make some copies. After Tarnowski again conferred with his counsel, he stated: "My strikes are no good, your honor, I can't come back?" He asked if he could appeal his strikes, and the court responded that Tarnowski needed a certificate of probable cause and the court had only used one strike conviction, striking all the others for the purposes of sentencing. Tarnowski continued: "I believe all my strikes are no good." The court answered: "Well, looking at the prison packages, I would say to the contrary; they are good." Tarnowski said: "Yeah. I mean, I wasn't advised of my rights when I took those."

## DISCUSSION

Tarnowski appears to challenge the use of his strike conviction on the basis that the “Three Strikes” law “was not law in ‘1988.’” This is a contention that the Three Strikes law is a prohibited ex post facto law, a contention rejected by the California Supreme Court. (*People v. Helms* (1997) 15 Cal.4th 608, 614–616.)

Tarnowski also argues that imposing two prior prison term enhancements is a prohibited “double enhancement.” Section 667.5, subdivision (b), provides that when a person is convicted of any felony for which a prison sentence is imposed, “the court shall impose a one-year term for each prior separate prison term.” Here, Tarnowski admitted all six prior prison terms. The trial court imposed a one-year term for each of only two of the prior terms (striking the remaining prison terms). This is proper under the statute.

Tarnowski argues that the strike package was inadequate to prove his prior strike conviction in 1988 (no. A097565) because it did not contain transcripts, police reports, and court minutes, so that a motion under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 to strike the 1988 conviction would have been granted. Tarnowski did not make a motion to dismiss or strike the conviction; instead he expressly admitted it. Defense counsel did not object to the strike package. A defendant's failure to request that the trial court exercise its discretion to dismiss or strike a conviction under *Romero* “waives or forfeits his . . . right to raise the issue on appeal.” (*People v. Carmony* (2004) 33 Cal.4th 367, 375–376.) Claims involving a trial court's failure to properly make discretionary sentencing choices are waived if counsel fails to object below. (*People v. Scott* (1994) 9 Cal.4th 331, 353–354.)

In any event, the package contained the certified prison records for the conviction, including the abstract of judgment, a fingerprint card, and a photograph of Tarnowski. This was sufficient. “Under section 969b, the People may satisfy the burden of proving a prior conviction by introducing into evidence a certified copy of a prison record.” (*People v. Matthews* (1991) 229 Cal.App.3d 930, 937.) “‘As a practical matter, . . . prior convictions are normally proven by the use of documentary evidence alone.’ [Citation.] ‘Once the prosecutor presents this prima facie evidence of conviction, the trial court is

allowed to make reasonable inferences from the facts presented. If there is no evidence to the contrary, the trial court may consider the abstract and the facts of the particular case, and utilizing the official duty presumption, find a defendant was convicted of and served the term of imprisonment for the listed felony.’” (*People v. Prieto* (2003) 30 Cal.4th 226, 258.)

Tarnowski requests that based on his assigned errors, his sentence be modified to the midterm. Because we find no error, no modification is necessary.

We have examined the entire record and are satisfied that appellant’s counsel has fully complied with his responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

#### **DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

CHANEY, J.