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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.
ALFRED R. VILLAREAL,
Defendant and Appellant.

2d Crim. No. B239690
(Super. Ct. No. KA093995)
(Los Angeles County)

Alfred R. Villareal appeals his conviction by jury for aggravated assault with a great bodily injury enhancement (Pen. Code, §§ 245, subd. (a)(1); 12022.7, subd. (a))¹ and battery with serious bodily injury (§ 243, subd. (d)). In a bifurcated trial, the trial court found that appellant had suffered a prior serious felony (§ 667, subd. (a)(1)) and two prior strike convictions (§§ 667, subd. ((b)-(i); 1170.12, subs. (a) - (d)). The court denied a motion to dismiss the prior strike convictions (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497) and sentenced appellant to 33 years to life state prison. We affirm.

Facts

Appellant had a long time feud with Rene Beltran and Beltran's relatives dating back to childhood days. In 1984, appellant hit 17-year-old Beltran in the face with a chain and stabbed him.

¹ All statutory references are to the Penal Code.

Fast forward to March 13, 2011 -- 26 years later. Appellant saw Beltran sitting in a pizza parlor, came up from behind, and hit him with a barrage of punches to the head. Witnesses saw a "flaring . . . back and forth" and saw appellant put a silver object in his pocket and take off.

Beltran declined an ambulance because he couldn't afford it and arrived at his aunt's house "full of blood." He was rushed to the hospital where he was treated for nose fractures, a fractured cheekbone, hemorrhaging around the eye, extensive swelling around the eyes and nose, and a cut lip that required stitches. Beltran was unable to work for two weeks and, for about 10 weeks, had problems breathing through his nose, numbness to the face, and eating.

Appellant told the police that he had "built up anger" after he was stabbed in the 1990s by Beltran's cousin.

Romero Motion

Appellant contends that the trial court abused its discretion in denying his *Romero* motion to dismiss the prior strike convictions: a 1984 assault with a deadly weapon on Beltran and a 1995 robbery conviction. Appellant, however, has an extensive criminal history. As a juvenile, petitions were sustained for a vehicle theft and grand theft in 1981, attempted grand theft in 1982, grand theft in 1983, and the 1984 aggravated assault of Beltran which counted as the first strike. As an adult, appellant was convicted of tampering with a vehicle (1992), driving under the influence (1993), destruction of property (1994), carrying a loaded firearm in a public place (1995), a 1995 robbery conviction that counted as a second strike, infliction of corporal injury on a spouse (1998), and resisting an officer (2002).

The trial court found that appellant's anger issues date back to the first strike conviction when appellant stabbed Beltran in the back. "It appears that 24 years of rage could not be controlled. That whatever new life that you had established for yourself, according to the letters that I have read, that the family obligations that you assumed, that the family members who had been dependent upon your good graces, were overwhelmed by a great need to inflict retribution for events that took place over 20 years

ago. [¶] The [current] assault . . . though, wasn't one of which a confrontation took place, [or where] words were exchanged. The assault took place while the victim was watching TV and enjoying snacks and a beer in a crowded family location, crowded with people, football game going on, families enjoying pizza. And the defendant viciously, without any provocation, assaulted the victim from behind while he was seated."

The trial court found that appellant was a danger to the community, to Beltran, and to Beltran's family. "[N]ot only does this most recent conviction come within the purview of the spirit of the Three Strikes law, it being a serious or violent felony, but this Court hasn't seen in its 15 years on the bench - 37 years in the legal profession, . . . where 25 years later an assault takes place of the same victim"

The trial court found that the sentence would be 16 years if it struck one of the prior convictions. But "[t]his 16-year sentence would not be justified under the court's discretion in applying *Williams* [*People v. Williams* (1998) 17 Cal.4th 148] and *Romero* in regards to the specifics of this offense and the defendant's history and the fact that we have the same victim as bookends to this man's life [¶] . . . [T]he court can't fathom any mitigating aspects . . . that would justify sentence other than what the three strikes law calls for."

We review for abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 376.) The question is " ' 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 scheme's spirit, in whole or in part, and hence should be treated as though he has not previously been convicted or one or more serious and/or violent felonies.' [Citation.]" (*Id.*, at p. 377.)

Appellant argues that the prior strikes are remote in time, that he experienced a difficult childhood, and that appellant is happily married and has a supportive family. Two deadly assaults on the same victim, spanned by a period of 25 years, is highly unusual. The trial court was fully aware of its sentencing discretion and

reasonably concluded that appellant should be sentenced as a three strikes offender. (See e.g., *People v. Williams, supra*, 17 Cal.4th at pp. 163-164.)

Once a career criminal commits the requisite number of strikes, the "circumstances must be 'extraordinary' " before he or she can be deemed to fall outside the spirit of the Three Strikes law. (*People v. Carmony, supra*, 33 Cal.4th at p. 376.) Appellant makes no showing that the sentence is so irrational or arbitrary that no reasonable person could agree with it. (*Id.*, at pp. 376-377.)

The judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

George Genesta, Judge
Superior Court County of Los Angeles

Marta I. Stanton, under appointment by the Court of Appeal, for Defendant and Appellant.

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