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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.

JOSE DELCARMEN SANCHEZ,

Defendant and Appellant.

2d Crim. No. B277101  
(Super. Ct. No. 15F-06623)  
(San Luis Obispo County)

Jose Delcarmen Sanchez appeals a judgment following conviction of felony resisting an executive officer, with a finding that he suffered a prior serious and violent felony strike conviction. (Pen. Code, §§ 69, 667, subds. (b)-(i), 1170.12, subds. (a)-(d).)<sup>1</sup> We conclude that the trial court did not abuse its discretion by denying a motion to strike his 1967 strike conviction for first degree murder, and affirm. (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 504.)

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

### *FACTUAL AND PROCEDURAL HISTORY*

In the late evening of July 22, 2015, San Luis Obispo Police Officer Blake Etherton patrolled downtown San Luis Obispo in a marked patrol vehicle. As he drove on Higuera Street, Etherton saw Sanchez drinking beer and walking on the sidewalk with another man. When Sanchez noticed Etherton, he untucked his shirt and tossed the beer can against a tree. Etherton stopped his patrol vehicle and approached Sanchez who walked toward Etherton with “a male bravado.”

Etherton repeatedly demanded that Sanchez show his hands, but Sanchez refused and raised his hands to push Etherton. Etherton then grabbed Sanchez’s arms, placed them behind his back, and walked him toward the patrol vehicle. Sanchez resisted and broke free but Etherton forced him to the ground. Sanchez then “contort[ed]” his body to resist any restraint or handcuffs.

A second police officer arrived to assist Etherton. Sanchez was intoxicated and uncooperative; he uttered profanities and challenged Etherton to fight. Together, the two officers placed Sanchez in the patrol vehicle. During the arrest, Sanchez kicked Etherton twice and later kicked the windows of the patrol vehicle. Etherton had responded to a police call the prior week regarding Sanchez, whom he described as an “angry drunk.”

Sanchez’s detention and arrest were captured on a video-recording by the patrol vehicle camera. The video-recording was received into evidence at trial. Sanchez’s companion walked away during the incident.

### *Conviction, Sentencing, and Appeal*

Following a court trial, Sanchez was convicted of felony resisting an executive officer. (§ 69.) The trial court also found

that Sanchez suffered two prior serious and violent felony strike convictions in 1967 for robbery and first degree murder. (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d).) The court then partially granted Sanchez's motion pursuant to *People v. Superior Court (Romero)*, *supra*, 13 Cal.4th 496, 529-530, and it struck the felony strike conviction for robbery. In ruling, the trial judge stated: "I find that there is a difference between the magnitude of [the crime] to the community presented by the conviction under . . . section 187 as opposed to the robbery that took place, the 211."

The trial court sentenced Sanchez to the low term of one year four months, which it then doubled as a second strike conviction to two years eight months. The court also imposed a \$500 restitution fine, a \$500 parole revocation restitution fine (suspended), a \$40 court security assessment, and a \$30 criminal conviction assessment period. It awarded Sanchez 770 days of presentence custody credit. (§§ 1202.4, subd. (b), 1202.45, 1465.8, subd. (a); Gov. Code, § 70373.)

Sanchez appeals and contends that the trial court abused its discretion by denying his motion to strike the 1967 murder strike conviction.

### *DISCUSSION*

Sanchez asserts that the nature of his present felony and remote strike convictions as well as the particulars of his background and character place him outside the spirit of the three strikes law. (*People v. Williams* (1998) 17 Cal.4th 148, 161 [criteria to consider regarding striking prior serious or violent felony conviction].) Thus, he points out that he was 21 years old at the time of the 1967 homicide; he is now 72 years old, homeless, and drug- and alcohol-dependent; the two prior felony strike convictions arise from the same factual circumstances --

robbery of a liquor store; and his subsequent criminal history concerns misdemeanor non-violent drug and alcohol related crimes.

The 1967 murder conviction concerned the robbery of Seaside liquor store by Sanchez and his codefendant, Paul Lomas Martinez. During the robbery, Seaside Police Officer George Kieffer entered the liquor store in response to a burglar alarm. At gunpoint, Sanchez disarmed Kieffer and ordered him to the floor. When the liquor store clerk then lunged at Sanchez, Sanchez shot him in the face with Kieffer's service revolver. Meanwhile, Martinez left the liquor store through the back door. Sanchez also fled the store following the shooting. As the two men left in a vehicle, another police officer pursued. During the pursuit, Sanchez fired a gun through the back windshield at the officer. Martinez and Sanchez were eventually apprehended. Martinez pleaded guilty to second degree murder and robbery. Following a jury trial, Sanchez was convicted of first degree murder and robbery.

Pursuant to section 1385, subdivision (a), the trial court may strike a prior felony conviction "in furtherance of justice." (*People v. Williams, supra*, 17 Cal.4th 148, 161.) The trial court and the reviewing 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 scheme's spirit, in whole or in part . . . ." (*Ibid.*) At the very least, the reason for dismissing a strike conviction must be that which would motivate a reasonable judge. (*Id.* at p. 159.) When the circumstances "manifestly support" the striking of a prior conviction and no reasonable

minds could differ, the failure to strike constitutes an abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 378 [abuse of discretion exists only in “an extraordinary case”].)

We review rulings regarding motions to strike prior felony convictions pursuant to a deferential abuse of discretion standard. (*People v. Williams, supra*, 17 Cal.4th 148, 162; *People v. Myers* (1999) 69 Cal.App.4th 305, 309.) Appellant bears the burden of establishing that the trial court’s decision is unreasonable. (*People v. Carmony, supra*, 33 Cal.4th 367, 376 [burden placed on appellant to establish that sentencing decision is irrational or arbitrary]; *People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977-978 [presumption that trial court acts to achieve lawful sentencing objectives]; *Myers*, at pp. 309-310.) We do not substitute our decision for that of the trial court. “It is not enough to show that reasonable people might disagree about whether to strike one or more of [defendant’s] prior convictions.” (*Myers*, at p. 310.)

The trial court properly determined that this is not an extraordinary case that “manifestly support[s]” dismissal of the prior strike. (*People v. Carmony, supra*, 33 Cal.4th 367, 378.) As such, the court did not abuse its discretion. (*People v. Solis* (2015) 232 Cal.App.4th 1108, 1124-1125 [no abuse of discretion in refusal to strike two 30-year-old felony convictions for assault with a deadly weapon].) Sanchez’s murder conviction involved his egregious and callous behavior in shooting the liquor store clerk in the face with the police officer’s service revolver and then shooting at a second officer during the getaway. For the next 30 years, Sanchez reoffended with parole violations, drug-related convictions, two resisting arrest convictions, and a battery conviction, among other crimes. He has also failed to rehabilitate

his destructive alcohol and drug dependencies. During the present offense, Sanchez, while intoxicated, kicked Etherton twice. The remoteness of Sanchez's murder conviction is "not significant" given his lengthy criminal history. (*People v. Gaston* (1999) 74 Cal.App.4th 310, 321; *People v. Humphrey* (1997) 58 Cal.App.4th 809, 813 [20-year-old prior conviction not a mitigating factor where defendant has led a continuous life of crime thereafter].) Moreover, the court exercised its discretion and mitigated Sanchez's sentence by dismissing the robbery strike conviction; Sanchez would have otherwise received a sentence of 25 years to life.

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Roger T. Picquet, Judge

Superior Court County of San Luis Obispo

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