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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

BERNARD GOODWIN,

Defendant and Appellant.

B287821

(Los Angeles County  
Super. Ct. No. BA445750)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kathleen Kennedy, Judge. Affirmed and remanded with directions.

Vanessa Place, 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, Senior Assistant Attorney General, Blythe J. Leszkay and David A. Voet, Deputy Attorneys General, for Plaintiff and Respondent.

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Bernard Goodwin appeals the judgment entered following his conviction by a jury of two counts of forcible rape of a child 14 years old or older, forcible sodomy and forcible oral copulation of a child 14 years old or older and aggravated assault, contending the judgment should be vacated because the trial court failed to properly advise him of the consequences of withdrawing from a plea bargain to which he had tentatively agreed. Goodwin also contends the trial court abused its discretion by denying his request to dismiss his two prior strike convictions for robbery. We reject Goodwin's arguments and affirm his convictions but remand the matter to allow the trial court to consider whether to exercise its discretion under the recent amendments to Penal Code sections 667, subdivision (a)(1), and 1385<sup>1</sup> to dismiss any of the five-year prior serious felony enhancements imposed as part of Goodwin's aggregate indeterminate sentence of 140 years to life.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. The Information*

Goodwin was charged in a five-count amended information with two counts of rape by force of a child 14 years old or older (§§ 261, subd. (a)(2), 264, subd. (c)(2)) (counts 1 and 2) and one count each of sodomy by force of a child 14 years old or older (§ 286, subd. (c)(2)(C)) (count 3), oral copulation by force upon a child 14 years old or older (former § 288a, subd. (c)(2)(C))<sup>2</sup> (count 4) and assault with intent to commit rape upon a person under 18 years old (§ 220, subd. (a)(2)) (count 5). The amended

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<sup>1</sup> Statutory references are to this code.

<sup>2</sup> Former section 288a was renumbered section 287, effective January 1, 2019. (See Stats. 2018, ch. 423, § 49.)

information also alleged Goodwin had suffered two prior serious felony convictions (robbery) within the meaning of the three strikes law and section 667, subdivision (a). Goodwin pleaded not guilty and denied the special allegations.

*2. Plea Negotiations and Goodwin's Decision To Go to Trial*

Shortly before trial began the People offered and Goodwin tentatively accepted a negotiated plea agreement: Goodwin would plead to count 2 of the information, forcible rape of a child who is 14 years old or older, to a new count 6, unlawful sexual intercourse with a child under the age of 16 when the defendant is 21 years old or older (§ 261.5, subds. (a) & (d)), and to a new count 7, committing a lewd act on a child who is 14 or 15 years old by a person who is at least 10 years older than the child (§ 288, subds. (a) & (c)(1)); would admit one prior strike conviction; and would be sentenced to an aggregate state prison term of 15 years four months.

After the prosecutor described the proposed agreement, the court asked her to state the reasons she had agreed to this disposition. In response the prosecutor stated, "There are issues on both sides in terms of the gravity, the seriousness of [the] offenses. But the defendant has never suffered any prior sex offenses. And the victim in this case was very, very conflicted about testifying. And the People believe that it's in the best interest of both sides to reach this disposition."

The court asked Goodwin if he understood everything involved with the proposed disposition as described by the prosecutor. Goodwin responded, "Yes." The court then asked, "Other than what's been stated here in court on the record, have you been promised anything else in order to get you to plead to these offenses and accept the offer that has been made?"

Goodwin replied, “No. . . . This is all I—I agreed to take the deal because I’m scared.” When the court assured Goodwin, “You have the right to have your trial,” Goodwin said, “That’s too scary.” The court asked, “And so when you say you’re scared, you are scared of what might happen if you are convicted of all the charges?” Goodwin answered, “Yes.”

At this point the court explained it had spent a lot of time in chambers discussing the case with the prosecutor and defense counsel and had encouraged them to see if they could come to a mutually agreeable disposition “because of the issues involved in this matter.” The court continued, “And one of the issues, of course, is that if you were convicted of all of these charges—and considering the record that you have of the prior strikes, you’re facing a very, very long time, probably the rest of your life in jail.” After commenting that at trial there would be witnesses for both the prosecution and the defense, strengths and weaknesses, good parts and bad parts for both sides, and observing that “when you present evidence to a jury, you never really know in advance how the jury is going to see that evidence,” the court again noted, “The risk of course, of going to trial on a case like this is what we talked about; is that you could be convicted of all of these charges and, you know, receive a very, very long sentence.” The court explained that, with the proposed disposition, in contrast, “at some point in time those prison doors are going to open and you’re going to be able to be released again.” Concluding its remarks, the court stated, “But you do not have to take this disposition, Mr. Goodwin; it’s totally up to you. It’s your choice.”

At this point the court addressed defense counsel, who advised the court that he did not recommend that Goodwin accept the proposed plea agreement. The court asked counsel if

he had explained the risks of going to trial and the potential sentence Goodwin faced if he were convicted, as well as the ramifications of accepting the plea agreement; counsel responded he had.

Following the brief summary of defense counsel's advice, the court asked Goodwin, "Do you wish to go forward with this disposition at this time?" Goodwin answered, "No. Now you convinced me. Let's just to go trial and see what we do." The court assured Goodwin, "If you want to have your trial, that's fine. We will have the trial." During this interchange Goodwin's mother, who was seated in the audience, shouted out, "Don't take it." The court reiterated the choice was Goodwin's: "It doesn't matter what mom says; it is your choice." Goodwin declined the court's offer to take more time and discuss the matter privately with his counsel, once more saying, "I will go ahead and have the trial." He added, "I'm just scared and just nervous, just—I didn't commit this crime." The court responded, "Okay. Well, then, if you did not commit the crime, then that's why we have trials. . . . So, if you want to have your trial, then we will have the trial. But I just want to make sure you understand that if you change your mind, there's not—there's no going back." Goodwin stated he understood and confirmed he was certain that he wanted to go to trial.

### 3. *Evidence at Trial*

On April 6, 2016 15-year-old Mikyla W. attempted to meet her stepmother at her niece's preschool for a ride home. By the time Mikyla arrived, however, the preschool was closed; and her stepmother was not there. It was dark and raining. Mikyla went to wait at a nearby fast food restaurant, where she was approached by Goodwin, who offered to buy her food. Goodwin

then suggested he take Mikyla to his mother's house. Ultimately they walked to a location that Goodwin referred to as a "trap house."<sup>3</sup>

Mikyla was tired and went to sleep on a couch. The following morning, after Goodwin gave Mikyla some food, he told her to get on his bed. When she refused, Goodwin became violent, pushed her onto the bed, took off her clothes and sexually assaulted her. Following the attack, Goodwin sold drugs to people who came to the house. Goodwin later took Mikyla to a laundromat to wash her clothes; one of his friends took her back to the trap house.

The following day Goodwin again sexually assaulted Mikyla and tried to recruit her to sell drugs. Mikyla was finally able to leave the trap house on April 10, 2016. She called a friend, met her aunt at a fast food restaurant, went to her grandmother's house and reported the sexual assaults to the police. On April 11, 2016 police officers took Mikyla to the trap house where she identified Goodwin as the assailant.

Mikyla was taken to the Santa Monica Rape Treatment Center for a sexual assault examination. Her description of events to the nurse practitioner was generally consistent with her trial testimony, and her injuries were consistent with the history she had provided.

The People presented DNA evidence and several witnesses to explain it. The evidence confirmed Mikyla's presence in Goodwin's bedroom in the trap house and indicated sexual

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<sup>3</sup> "Trap house" is a slang expression for a drug house. (See *United States v. Harper* (7th Cir. 2014) 766 F.3d 741, 743; *Bowen v. State* (2016) 299 Ga. 875, 875 [792 S.E.2d 691, 2016 GA Lexis 691].)

activity had likely occurred with Goodwin but could not conclusively establish she had been sexually assaulted.

Defense witnesses challenged the thoroughness of the sexual assault examination and DNA testing. Goodwin did not testify.

#### 4. *The Verdict and Sentencing*

The jury received the case at 11:20 am. on July 26, 2016. Late in the afternoon of July 26 the jury asked for a rereading of the testimony of the DNA experts “regarding testing of breast, analysis and conclusion. Questioning the level of robustness of sample” and “regarding scrotum testing, analysis and conclusion. Questioning the ‘robust’ sample.” The jury resumed deliberating at 9:33 a.m. on July 27 and signaled a verdict had been reached at 11:04 a.m. It does not appear any testimony was reread prior to the jury reaching its verdict.

The jury convicted Goodwin of all five charged offenses. Following a bifurcated trial the jury found true the special allegations that Goodwin had been convicted of robbery in August 1986 and again in May 1988, serious felonies within the meaning of the three strikes law and section 667, subdivision (a).

The court denied Goodwin’s request to dismiss his prior strike convictions pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 and sentenced Goodwin to an aggregate indeterminate term of 140 years to life in state prison: consecutive 25-year-to-life terms as a third strike offender on each of counts 1 through 4, plus two 5-year enhancements pursuant to section 667, subdivision (a), for each offense. The court imposed and stayed the middle term of seven years on count 5 pursuant to section 654.

## DISCUSSION

### 1. *The Trial Court Did Not Improperly Advise Goodwin About the Significance or Consequences of the Tentative Plea Agreement*

Ignoring context and focusing on isolated statements by the trial court during the extended colloquy between it and Goodwin regarding his tentative plea agreement, Goodwin argues his conviction must be vacated because the court failed to advise him he would spend the rest of his life in prison if convicted on all charges following a trial and improperly suggested he was not allowed to enter into a plea agreement if he believed he was innocent. Neither contention withstands scrutiny.

#### a. *“Probably the rest of your life in jail”*

As discussed, the court told Goodwin, because of his prior strike convictions, if found guilty of all of the pending charges, he faced “a very, very long time, probably the rest of your life in jail.” Goodwin complains this advice was “massively misleading” because he was actually exposed to four, mandatory, consecutive 25-year-to-life three-strikes terms,<sup>4</sup> plus consecutive determinate terms totaling 40 years for the section 667, subdivision (a), prior serious felony enhancements, guaranteeing he would die in prison.

Counsel’s hyperbole notwithstanding, the court’s advisement was substantially correct: If Goodwin accepted the plea agreement, which his trial counsel and his mother both

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<sup>4</sup> As the Attorney General explains, pursuant to section 1170.12, subdivision (a)(7), a defendant with one or more prior serious or violent felony convictions whose current conviction is for more than one serious or violent felony must be sentenced to consecutive sentences for those current convictions.



urged him to reject, he would be sentenced to state prison for slightly more than 15 years. If, on the other hand, he went to trial and was convicted on all charges, he likely faced the prospect of spending the rest of his life in prison. But if successful in urging the court to dismiss his prior strike convictions, through imposition of concurrent terms, Goodwin, who was born in 1965, could have been sentenced to serve only 17 years (if sentence on all counts were run concurrently) or 20 years (if two of the sentences ran consecutively and the rest concurrently) in state prison. As the court indicated, however, such leniency was not likely; and Goodwin “probably” would spend the rest of his life in prison.

In short, the court did not misadvise Goodwin. (Cf. *People v. Archer* (2014) 230 Cal.App.4th 693, 702-703 [although a prejudicial mistake in advising a defendant of his or her maximum possible sentence can constitute good cause for withdrawal of a plea, because “the nature of the inquiry under section 654 is intensely factual and cannot be determined in advance, particularly, where, as here, there has not been a trial,” court did not err in failing to explain to the defendant the possible effects section 654 might have on his sentence if convicted after trial].) Nor did it omit information (the maximum possible sentence Goodwin faced) that would have made the plea agreement more favorable to Goodwin than it appeared to be without that information. (See *People v. Goodwillie* (2007) 147 Cal.App.4th 695, 734 [“In cases involving plea bargains that the defendant has accepted, reversal is generally required only if the court fails to inform the defendant of information that makes the plea bargain *less attractive* than it appeared to be without the omitted information. [Citations.] Extending that concept to the

reverse situation where, as here, a defendant rejects the plea bargain and is subsequently convicted, reversal may be required if the omitted information makes the bargain more favorable to the defendant than it appeared to be without the information”].)<sup>5</sup> The favorable terms of the plea agreement and the benefit to Goodwin of accepting the offer and foregoing a trial were clearly and accurately described: If convicted after trial, he could “receive a very, very long sentence”; with the proposed plea agreement, in contrast, “at some point in time those prison doors are going to open and you’re going to be able to be released again.”

In addition, although the trial court has a duty to admonish a defendant of all the direct consequences of a plea agreement (see, e.g., *People v. Villalobos* (2012) 54 Cal.4th 177, 181-182),

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<sup>5</sup> In *People v. Goodwillie*, *supra*, 147 Cal.App.4th 695 the self-represented defendant was affirmatively misadvised that he would not be eligible for 50 percent conduct credits and would have to serve, at minimum, 85 percent of his sentence if he accepted a negotiated plea offer of five years four months. (*Id.* at p. 733.) The defendant rejected the offer, went to trial, was convicted and then sentenced to a 10-year state prison term with 50 percent conduct credits. The court of appeal held the court and the prosecutor had a duty not to misinform the defendant as to his potential eligibility for 50 percent conduct credits and concluded that providing the defendant with inaccurate information prejudiced him by causing him to reject an offer that was more favorable than the sentence he received after trial. (*Id.* at pp. 733, 736-737 [defendant could “clearly establish he would have accepted the plea offer that was made if he had been accurately advised of his credit eligibility,” because he “stated on the record that he was willing to accept five and a half years if, under the terms of the offer, he could receive 50 percent credit”].)

Goodwin has cited no authority, and we are aware of none, that requires the court, absent a request, to calculate the maximum term possible while a defendant weighs whether to accept or reject a proposed plea agreement. Goodwin made no such request, and the trial court here did not purport to actually determine the maximum sentence that could be imposed after trial.

b. *“That’s why we have trials”*

After the court had repeatedly advised Goodwin it was his decision whether to accept the proposed plea agreement or proceed to trial, and confirmed that defense counsel had recommended that Goodwin reject the proposal, Goodwin once again stated he was scared of going to trial and then added, “I didn’t commit this crime.” As discussed, the court responded, “Well, then, if you did not commit the crime, then that’s why we have trials.” Goodwin replied, “Yeah.” The court continued, “So if you want to have your trial, then we will have the trial.”<sup>6</sup>

At sentencing Goodwin told the court, “You got to remember, I tried to take a deal on this because I was scared. And when I tried to take that deal you warned me, you said, ‘Why don’t you to go to trial with this?’ And I said, ‘Because I’m scared, because if I lose I get in a lot of trouble.’ Your exact words was,

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<sup>6</sup> At his sentencing hearing Goodwin continued to insist he was innocent of the charges, telling the court, “I never committed no part of this crime right here, no parts of it. The only reason why this little girl made this story up is because she was a runaway and she had to have an excuse where she been at. I didn’t do none of this part of this story, your honor. No parts to this crime. And I fixing to go to jail for all this time for something I really didn’t do.”

‘You don’t know how much time I give you.’ And now look what’s going on with me.” The court immediately corrected Goodwin, telling him he was misquoting what had been said: “I warned you that if you went to trial, all bets were off. . . . I warned you that if you didn’t take it [the plea deal], that who knows what would happen.” Goodwin acknowledged the court’s recitation was correct, stating, “Yeah, yeah.” A few minutes later, however, Goodwin told the court he had rejected the plea offer “because of the statement you—I thought you made—you know, your honor, I did not commit this crime.”

On appeal Goodwin contends the court’s statement “That’s why we have trials” made immediately after he declared he was scared of a trial but was not guilty of sexually assaulting Mikyla, indicated he could not accept the plea deal and had to go to trial if he was innocent. He asserts this misadvisement by the court violated his due process rights. Goodwin’s argument is doubly flawed.

First, both before and after it said, “That’s why we have trials,” the court emphasized the decision whether to accept the proposed agreement or go to trial was entirely Goodwin’s, stating, “It makes no difference to me,” and asking, “Are you certain that you do want to have your trial?” before concluding the discussion. Indeed, the court offered Goodwin additional time to speak to his lawyer privately so he could be certain of his decision after he announced he wanted to go to trial, an offer Goodwin declined. Read in context, the court’s statement in no way suggested Goodwin could not accept the proffered plea deal.

Second, Goodwin declared, “You’ve convinced me. Let’s just go to trial and see what we do” well before the court stated, “That’s why we have trials.” Rather, he was responding to the

court's observation that there were risks to both sides at trial and his counsel's confirmation that he did not recommend that Goodwin accept the proposed disposition. Accordingly, whatever Goodwin may have recalled by the time of his sentencing, the court's observation "That's why we have trials" was not the cause of his decision to reject the plea deal. Goodwin's "buyer's remorse" and after-the-fact reconstruction of events are not grounds for vacating his conviction.

2. *Denial of Goodwin's Request To Dismiss His Prior Strike Convictions Was Within the Trial Court's Discretion*

Section 1385, subdivision (a), vests the court with discretion to dismiss a qualifying strike conviction "in furtherance of justice." (*People v. Superior Court (Romero)*, *supra*, 13 Cal.4th at p. 530; *People v. Williams* (1998) 17 Cal.4th 148, 158.) "[I]n ruling whether to strike or vacate a prior serious and/or violent felony conviction allegation or finding under the Three Strikes law . . . or in reviewing such a ruling, the 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 [three strikes] scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies." (*Williams*, at p. 161.)

We review the trial court's decision not to dismiss a prior strike allegation under section 1385 for abuse of discretion. (*In re Large* (2007) 41 Cal.4th 538, 550.) "[T]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary." (*People v. Carmony* (2004) 33 Cal.4th 367, 376.) "[T]he three strikes law not only

establishes a sentencing norm, it carefully circumscribes the trial court's power to depart from this norm and requires the court to explicitly justify its decision to do so. In doing so, the law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper. [¶] . . . [¶] . . . '[I]t is not enough to show that reasonable people might disagree about whether to strike one or more' prior conviction allegations. . . . Because the circumstances must be 'extraordinary . . . by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he squarely falls once he commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack' [citation], the circumstances where no reasonable people could disagree that the criminal falls outside the spirit of the three strikes scheme must be even more extraordinary." (*Id.* at p. 378.)

Goodwin contends the court abused its discretion in refusing to dismiss either of his two prior strike convictions because it purportedly gave serious consideration only to his life-long criminal record and failed to give appropriate weight to the fact that his prior strike convictions for robbery were more than 25 years old, his subsequent criminal offenses were not violent or serious felonies and he suffered from a physical disability that limited his employability. After noting the robbery convictions "were many years ago," however, the trial court correctly reasoned that dismissing prior strike convictions "is appropriate when basically someone has kind of turned their life around; that almost as if, you know, these convictions were sort of [an] aberration, something that they outgrew. You know, that they became a productive member of society and led a blameless life."

The trial court properly articulated rational grounds for concluding, in the words of *People v. Williams, supra*, 17 Cal.4th at page 161, that Goodwin could not be deemed to be outside the three strikes scheme's spirit, in whole or in part. Although Goodwin was not convicted of any serious or violent felony between his robbery convictions and the current violent offenses, as the court found, "he has been in and out of trouble constantly." In 1997 Goodwin was convicted of possession of a controlled substance and sentenced to eight years in state prison. He was discharged in 2005. In 2007, 2009 and 2012 he was convicted of a number of vehicle-related misdemeanors and sentenced to probation with various, limited periods of jail time. In 2010 he was convicted of making criminal threats, and in 2012 of felony possession of marijuana for sale. The probation report indicated Goodwin was a member of a criminal street gang, and he was assessed as presenting a low-to-moderate risk of committing another sex crime if released.

In addition to his ongoing criminal record, the court explained that Goodwin presented no evidence "that he has done anything particularly positive in his life." The court pointed to the absence of a regular job—and there was no evidence he had made any efforts to obtain a job—and his lack of participation in any worthwhile community activities. To the contrary, the evidence at trial indicated Goodwin supported himself by selling drugs.

These particulars of Goodwin's background, character and prospects, combined with the extremely violent nature of the multiple crimes for which he had just been convicted, amply justified the trial court's decision not to dismiss either of the prior strike convictions.

### *3. A Limited Remand Is Appropriate*

At the time Goodwin was sentenced, the court was required under section 667, subdivision (a), to enhance the sentence imposed for conviction of a serious felony by five years for each qualifying prior serious felony conviction. On September 30, 2018 the Governor signed Senate Bill No. 1393, which, effective January 1, 2019, allows the trial court to exercise discretion to strike or dismiss the section 667, subdivision (a), serious felony enhancement. (See Stats. 2018, ch. 1013, §§ 1 & 2.) Because we cannot conclusively determine from the record that remand would be a futile act, we remand for the trial court to consider whether to dismiss or strike one or more of the five-year section 667, subdivision (a), enhancements imposed on Goodwin.

### **DISPOSITION**

The convictions are affirmed, and the matter remanded for the limited purpose of allowing the trial court to consider whether to dismiss or strike any of the prior serious felony enhancements imposed under section 667, subdivision (a).

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.