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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MARVIN HAYNIE,

Defendant and Appellant.

B237872

(Los Angeles County  
Super. Ct. No. KA093549)

APPEAL from a judgment of the Superior Court of the County of Los Angeles,  
Mike Camacho, Judge. Affirmed.

Adrian K. Panton, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney  
General, Lance E. Winters, Senior Assistant Attorney General, Linda C. Johnson,  
Supervising Deputy Attorney General, Blythe J. Leszkay, Deputy Attorney General, for  
Plaintiff and Respondent.

## INTRODUCTION

Defendant and appellant Marvin Haynie (defendant) was convicted of first degree burglary with a person present (Pen. Code, § 459<sup>1</sup>). On appeal, defendant contends that the trial court erred in denying his motion to strike his prior conviction pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero* motion). We affirm.

## BACKGROUND<sup>2</sup>

Defendant entered a garage attached to Elizabeth Garcia's residence while Garcia's two sons were home, broke into Garcia's vehicle, and stole papers from inside the vehicle's glove compartment. One of Garcia's sons went into the garage when defendant was exiting it.

The District Attorney of Los Angeles County filed an amended information charging defendant with one count of first degree burglary with a person present in violation of section 459. The District Attorney alleged that the offense was a violent and serious felony within the meaning of sections 667.5, subdivision (c), and 1192.7, subdivision (c), respectively. The District Attorney alleged that defendant suffered a prior conviction—in 2002—for violation of section 211, robbery, which qualified as a serious or violent felony pursuant to sections 1170.12, subdivisions (a) through (d), and 667, subdivisions (b) through (i); suffered a prior conviction—the same 2002 robbery conviction—which qualified as a serious felony pursuant to section 667, subdivisions (a)(1); and had a prior prison term as defined by section 667.5, subdivision (b)—a 2008 conviction for violating section 459, second degree burglary with a person present in violation of section 459.

Defendant represented himself. Following a trial, the jury found defendant guilty as charged, and defendant admitted the special allegations.

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<sup>1</sup> All statutory citations are to the Penal Code unless otherwise noted.

<sup>2</sup> Defendant does not contend that there was insubstantial evidence in support of his conviction.

The trial court denied defendant's *Romero* motion to strike his prior "strike" conviction. The trial court sentenced defendant to state prison for a term of 13 years, consisting of a middle term of 4 years on the count for first degree burglary with a person present, which was doubled pursuant to sections 1170.12, subdivisions (a) through (d) and 667, subdivisions (a)(1), and 5 years pursuant to section 667, subdivisions (a)(1). The trial court struck the one-year enhancement for defendant having a prior prison term pursuant to section 667.5, subdivision (b).

## DISCUSSION

Defendant contends that the trial court abused its discretion in denying his motion to strike his prior robbery conviction because the trial court "failed to consider [his] drug problem and the absence of violence, excepting the prior robbery conviction . . . ." The trial court acted within its discretion.

### *1. Standard of Review*

We review a trial court's denial of a motion to strike a prior strike conviction for an abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 373, 375.) There is a "strong presumption" that a "trial judge properly exercised his discretion in refusing to strike a prior conviction allegation." (*In re Large* (2007) 41 Cal.4th 538, 551.) "[A] trial court will only abuse its discretion in failing to strike a prior felony conviction allegation in limited circumstances." (*People v. Carmony, supra*, 33 Cal.4th at p. 378.) "[I]t is not enough to show that reasonable people might disagree about whether to strike one or more' prior conviction allegations. [Citation.] Where the record is silent [citation], or '[w]here the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court's ruling, even if we might have ruled differently in the first instance' [citation]." (*Ibid.*) Accordingly, the defendant bears the burden to establish that the trial court's decision was "so irrational or arbitrary that no reasonable person could agree with it." (*Id.* at p. 377.)

## 2. *Applicable Law*

Pursuant to section 1385, subdivision (a), a trial court has limited discretion to strike one or more prior strike convictions.<sup>3</sup> (*People v. Williams* (1998) 17 Cal.4th 148, 151-152 (*Williams*); see also *Romero, supra*, 13 Cal.4th at pp. 529-530.) “A defendant has no right to make a motion, and the trial court has no obligation to make a ruling, under section 1385. But [a defendant] does have the right to ‘invite the court to exercise its power by an application to strike a count or allegation of an accusatory pleading, and the court must consider evidence offered by the defendant in support of his assertion that the dismissal would be in furtherance of justice.’ [Citation.]” (*People v. Carmony, supra*, 33 Cal.4th at p. 375.)

As our Supreme Court explained in *People v. Carmony, supra*, 33 Cal.4th 367, the Three Strikes law “‘was intended to restrict courts’ discretion in sentencing repeat offenders.’ [Citation.] To achieve this end, ‘the Three Strikes law does not offer a discretionary sentencing choice, . . . but establishes a sentencing requirement to be applied in every case where the defendant has at least one qualifying strike, unless the sentencing court “conclud[es] that an exception to the scheme should be made because, for articulable reasons which can withstand scrutiny for abuse, this defendant should be treated as though he actually fell outside the Three Strikes scheme.”’ [Citation.]” (*Id.* at p. 377.) “Thus, the 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.” (*Id.* at p. 378; accord, *In re Large, supra*, 41 Cal.4th at pp. 550-551.)

“Consistent with the language of and the legislative intent behind the three strikes law, we have established stringent standards that sentencing courts must follow in order

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<sup>3</sup> Section 1385, subdivision (a), provides, “The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The reasons for the dismissal must be set forth in an order entered upon the minutes. No dismissal shall be made for any cause which would be ground of demurrer to the accusatory pleading.”

to find such an exception. “[I]n ruling whether to strike or vacate a prior serious and/or violent felony conviction allegation or finding under the Three Strikes law, on its own motion, “in furtherance of justice” pursuant to Penal Code section 1385[, subdivision] (a), or in reviewing such a ruling, the court in question 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, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.’ (*Williams, supra*, 17 Cal.4th at p. 161.)” (*People v. Carmony, supra*, 33 Cal.4th at p. 377.)

### 3. *Background Facts*

Following the trial pursuant to which the jury found defendant guilty as charged, the prosecutor filed a sentencing memoranda and opposition to defendant’s anticipated *Romero* motion, discussing defendant’s prior criminal history and requesting that defendant be sentenced to 18 years in state prison. Thereafter, defendant, appearing in propria persona, simultaneously filed a request for the trial court to strike the prior robbery conviction which had been charged as a special allegation under the provisions of sections 1170.12, subdivisions (a) through (d), and 667, subdivisions (b) through (i), a reply to the prosecutor’s opposition to defendant’s anticipated *Romero* motion, and a “motion for factors of mitigation.” The parties treat each of those filings as being in support of defendant’s request to strike the prior “strike” conviction, and the trial court reviewed them.

Defendant declared in support of his request for the trial court to strike his prior robbery conviction that regarding the underlying burglary crime for which he was convicted in this case, “my actions were not violent, nor serious. I didn’t threaten or try to hurt anybody, or even place anybody in any danger. In my opinion I got found guilty for a misunderstanding . . . . [And] I was a little intoxicated . . . .” Defendant stated in pleadings that that his criminal history consists of two felonies, one of which—the prior

robbery conviction which he seeks to strike—“being of a serious/or violent nature” and that conviction occurred almost 10 years ago when defendant was 18 years old.

Defendant stated that since his prior robbery conviction 10 years ago, he does not have a record of a serious or violent criminal conviction.

Defendant stated in his pleadings, “If I can go back in time and change some of my choices I would, and one of those choices would be I wouldn’t do drugs! Since I was ‘15 years old’ I’ve suffered from the disease of addiction. That addiction played a major factor in the decisions I’ve made in life. Drugs have ruined my life and deprived me of my freedom and family. It’s taking a lot for me to sit here and write this and actually admit I have a drug problem and I need help! . . . Prison only puts your drug problem on the back burner, you still have to deal with it once released from prison. Prison does not provide a steady program for which I need. I want to better myself and cure this disease which is addiction. So I’m asking the court for help.”

The trial court denied defendant’s *Romero* motion, stating, “[T]he court does acknowledge, at least to some degree, that [defendant’s] crime did not result in either victim injury or property damage or any financial loss whatsoever. But [defendant’s] conviction is a violent felony under the law. [¶] And, additionally, [defendant’s] prior felony criminal history is theft related. First, [defendant was] convicted of an armed robbery in 2002. [Defendant] received a five-year sentence as a result. Second, [defendant was] convicted of a commercial burglary in 2008 for which [he] received a 32-month commitment. While on parole, [defendant] committed the present offense, which is also a residential burglary. [¶] There are absolutely no signs of any effort on [defendant’s] part to rehabilitate [himself], but there are certainly multiple signs of continuous recidivism, especially theft-related conduct. [¶] [Defendant does not] have a basis for me to strike [his] convictions under *Romero*. [Defendant] fall[s] well within the strike law. As a matter of fact, the strike law was created for individuals like [defendant] who just don’t get the message that repeated criminal conduct will not be tolerated. So the *Romero* motion is denied, and we will proceed to sentencing.”

In sentencing defendant, the trial court stated that defendant's criminal record was "atrocious." Defendant objected to his sentence and requested that he be sentenced "as leniently as possible," stating, "[A]s far as to call my criminal record atrocious, I would disagree with that. I have on my record two felonies. I'm 28 years old. My last serious violent felony was ten years ago. I haven't since then attempted to commit a serious or violent felony. [¶] And my second felony consists of me going with my girlfriend at the time to a mall and her stealing something. It was commercial burglary."

#### 4. Analysis

The record establishes that the trial court considered defendant's "drug problem" and his criminal history involving crimes of violence. The trial court reviewed defendant's pleadings in support of his *Romero* motion and they set forth those factors defendant believed justified the trial court to exercise its discretion to strike his prior strike conviction.

In addition, defendant admitted that he was convicted in 2002 for violation of section 211, robbery, and it qualified as a serious or violent felony pursuant to sections 1170.12, subdivisions (a) through (d), and 667, subdivisions (b) through (i). The nature and timing of defendant's convictions for prior crimes was alleged in the information; it was set forth in the prosecutor's sentencing memorandum; and it was included in the probation officer's report (which was cited in the sentencing memorandum). In the absence of an affirmative showing to the contrary, we presume the trial court considered the nature and timing of defendant's prior convictions. (*People v. Carmony, supra*, 33 Cal.4th 367, 378.)

Although the trial court recognized that "at least to some degree, . . . [defendant's most recent] crime did not result in either victim injury or property damage or any financial loss," there nonetheless is a danger of violence and physical harm when residential burglary occurs. "Burglary of an inhabited dwelling . . . poses a risk to human life. As the court explained in *People v. Lewis* (1969) 274 Cal.App.2d 912, 920 [79 Cal.Rptr. 650] [superseded by statute on other grounds as stated in *People v. Hernandez*

(1992) 9 Cal.App.4th 438, 441]: ‘Burglary laws are based primarily upon a recognition of the dangers to personal safety created by the usual burglary situation—the danger that the intruder will harm the occupants in attempting to perpetrate the intended crime or to escape and the danger that the occupants will in anger or panic react violently to the invasion, thereby inviting more violence. The laws are primarily designed . . . to forestall the germination of a situation dangerous to personal safety[.]’ Our Supreme Court has characterized first degree burglary as ‘nonviolent criminal conduct which is, nevertheless, so dangerous’ as to call for enhanced punishment. (*People v. Jackson* (1985) 37 Cal.3d 826, 832 [210 Cal.Rptr. 623, 694 P.2d 736].)” (*People v. Estrada* (1997) 57 Cal.App.4th 1270, 1281.)

To the extent that defendant’s argument may be construed as asserting that the trial court was obligated to give a statement of reasons for denying defendant’s *Romero* motion, defendant is mistaken. Although a trial court must enter such a statement in the minutes of the court when dismissing a prior conviction, it is not required to “‘explain its decision not to exercise its power to dismiss or strike.’” (*People v. Carmony, supra*, 33 Cal.4th at p. 376.)

We therefore hold that defendant was within the spirit of the three strikes law (see *People v. Williams, supra*, 17 Cal.4th at p. 161), the trial court did not rule in an “arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice” (see *People v. Jordan* (1986) 42 Cal.3d 308, 316), and there was no abuse of discretion (see *Romero, supra*, 13 Cal.4th at p. 504).



**DISPOSITION**

The judgment is affirmed.

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MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.