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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.

LARRY DARNELL FORD,

Defendant and Appellant.

B279131

(Los Angeles County
Super. Ct. No. LA081376)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael V. Jesic, Judge. Affirmed.

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, Victoria B. Wilson and Idan Ivri, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

A jury convicted defendant Larry Darnell Ford of willfully failing to register as a sex offender. (Pen. Code, §§ 290.010, 290.018.)¹ The jury acquitted him of four alleged sex offenses against three young children. The trial court found true allegations that he had four prior strike convictions under sections 667, subdivision (d) and 1170.12, subdivision (b), denied his *Romero* motion (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497) to strike those prior strikes, and sentenced him to six years in state prison.

Defendant challenges the trial court's ruling on his *Romero* motion. Defendant did not provide this court with a complete and adequate record of the evidence that was before the trial court when it ruled on his motion. Further, defendant has not shown an abuse of discretion. Therefore, we affirm the judgment.

II. BACKGROUND

As a sex offender, defendant was required to register any address at which he regularly resided regardless of the number of days or nights he spent there. Defendant registered his mother's address as his residence. He did not register the address of his girlfriend's apartment. Defendant, his girlfriend and her three young children all resided there. As noted above, defendant was acquitted of charged sex offenses against those children.

¹ Further statutory references are to the Penal Code except where otherwise noted.

III. DISCUSSION

A. Defendant's Failure to Provide a Complete and Adequate Record on Appeal

The trial court denied defendant's *Romero* motion based in part on the severity of a home invasion robbery defendant committed in 1981. It is apparent from the record before us the trial court had reviewed the reporter's transcripts of defendant's trial for that crime before ruling on the matter. Defendant has not included those transcripts in the record on appeal.

Judgments and orders of the trial court are presumed correct and error must be affirmatively shown. (*People v. Giordano* (2007) 42 Cal.4th 644, 666; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It was defendant's burden to provide this court with a record on appeal adequate to assess error. (*People v. Delgado* (2017) 2 Cal.5th 544, 563, fn. 12; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141; *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296.) Defendant's failure to include the transcripts in the record on appeal interferes with meaningful review of the trial court's ruling. Nevertheless, we will consider the merits of defendant's claim based on what we have before us.

B. The Trial Court's Romero Ruling

Our Supreme Court has held that in ruling on a *Romero* motion, a trial court must consider "whether, in light of the nature and circumstances of [the defendant's] present felonies and prior serious and/or violent felony convictions, and the particulars of [the defendant's] background, character, and prospects, the defendant may be deemed outside the [Three

Strikes law's sentencing] 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." (*People v. Williams* (1998) 17 Cal.4th 148, 161; accord, *In re Large* (2007) 41 Cal.4th 538, 552.)

Our review is for an abuse of discretion. (*People v. Clancey* (2013) 56 Cal.4th 562, 581; *People v. Carmony* (2004) 33 Cal.4th 367, 376-377.) "In reviewing for abuse of discretion, we are guided by two fundamental precepts. First, "[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review." [Citations.] Second, a "decision will not be reversed merely because reasonable people might disagree. 'An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.'" [Citation.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it." (*People v. Carmony, supra*, 33 Cal.4th at pp. 376-377.)

Contrary to defendant's assertion, the trial court did not focus *exclusively* on the nature and circumstances of his 1981 home invasion robbery. The trial court also expressly considered the nature and circumstances of his present failure to register offense, his living situation at the time of his arrest, and his criminal record.

In connection with the home invasion robbery, defendant was convicted of robbery, rape in concert and forcible oral

copulation. The parties stipulated that, “During the commission of that crime [defendant] held the occupants hostage with the knowledge that his co[defendant] was committing rape and forcible oral copulation in a separate room.” At trial, defendant testified he was not in the room when the adult victim was assaulted; he was convicted of the sex offenses only as an aider and abettor. The trial court, having reviewed the trial transcripts, described the crimes as “horrific.” The court noted the incident involved “holding a family hostage, [and] stabbing someone.”

Defendant’s living circumstances at the time of his arrest were also a factor in the trial court’s ruling. Defendant was living with his girlfriend and her three young children. The girlfriend knew defendant was a registered sex offender. She had left her children with defendant in 2007 because she was unable to care for them. After she was reunited with her children, defendant moved in with them. The trial court described the home as “a highly, highly dysfunctional home.” The three children testified that when they were 9, 12 and 14 respectively, defendant introduced them to marijuana. The children regularly smoked marijuana with defendant. One daughter had been suspended from school for marijuana possession.

The trial court was not persuaded that defendant’s present offense, willful failure to register as a sex offender, was mitigated by his misunderstanding about where he actually resided. The trial court believed defendant’s failure to register his girlfriend’s home, where three young children also lived, was an intentional act of deceit.

With respect to defendant’s criminal record, the trial court observed defendant had continued to commit crimes following his

1993 release from prison, albeit not violent offenses. Between August 1997 and May 2013, defendant committed three misdemeanors and a felony. In 1999, he violated a probation grant. In 2002, he was sentenced to 16 months in state prison for felony forgery.²

On the record before us, we find no abuse of discretion. The trial court could reasonably conclude defendant was not outside the Three Strikes law's sentencing scheme. Defendant was a repeat and continuing offender who had engaged in "horrific," violent crimes when he was young. He continued to commit crimes after serving nine years in state prison. He performed

² Defendant's adult criminal history was set forth in the probation officer's report. On February 10, 1977, defendant was charged with felony burglary. On April 11, 1976, he was convicted as charged and granted probation. While on probation, on October 9, 1977, defendant was charged with first degree burglary. On November 6, 1978, defendant was convicted as charged, his probation was revoked and he was sentenced to three years in state prison. On December 30, 1981, defendant committed the home invasion robbery or robberies discussed below. He was charged with two counts of false imprisonment, four counts of second degree robbery, three counts of assault with a deadly weapon, one count of burglary, one count of oral copulation, and one count of rape in concert. On December 5, 1984, he was convicted as charged and sentenced to 22 years in state prison. Following his 1993 release from prison, and prior to the present offense, defendant was convicted as charged of: on August 27, 1997, giving false identification to a peace officer, a misdemeanor, resulting in a probation grant, however, defendant subsequently violated his probation; on June 13, 2002, felony forgery, resulting in a 16-month state prison sentence; on April 11, 2002, driving without a license, a misdemeanor; and on May 28, 2013, petty theft, a misdemeanor.

poorly on probation. He went back to state prison in 2002. At the time of his arrest, he was living with young children. He had at a minimum, exercised extremely poor and irresponsible judgment when he introduced them to marijuana.

He willfully violated his sex offender registration requirement. This was an intentional, deceitful act designed to prevent authorities from discovering he resided in a dysfunctional home with young children. We cannot say the trial court's ruling was "so irrational or arbitrary that no reasonable person could agree with it." (*People v. Carmony, supra*, 33 Cal.4th at p. 377.)

IV. DISPOSITION

The judgment is affirmed.

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LANDIN, J.*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.