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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.

VICTOR MANUEL ANAYA,

Defendant and Appellant.

2d Crim. No. B276659  
(Super. Ct. No. 2016002799)  
(Ventura County)

Victor Manuel Anaya appeals a judgment following his conviction for evading an officer with “[w]illful [d]isregard” (Veh. Code, § 2800.2, subd. (a)), a felony. The trial court sentenced Anaya to two years in state prison. We conclude, among other things, that the trial court did not err by 1) denying Anaya’s request to reduce this conviction from a felony to a misdemeanor, and 2) deciding not to place him on probation. We affirm.

FACTS

On the evening of January 22, 2016, Sheriff’s Deputy Joseph Horswill and his partner were in a “marked black and white” police vehicle. They saw a pickup truck with illegally “tinted windows” and a license plate that was not illuminated.

Horswill activated his “red light” and attempted to stop that vehicle for those traffic violations. Anaya was the driver of that truck. He drove his vehicle to the curb and gave Horswill “the impression he was going to pull over.” Anaya “then maneuvered away,” “accelerated,” and drove away.

Anaya attempted “a U-turn.” Horswill tried to block the truck’s path. He drove “towards the front” of Anaya’s vehicle. Horswill’s partner flashed a “spotlight” on the truck. Horswill saw Anaya “shaking his head from left to right” indicating “no.”

Anaya then made a right turn and drove away at “approximately 50 miles an hour” in a 25-mile-an-hour zone. He did not stop at two stop signs. He drove at speeds of approximately 75 miles an hour on a city street with a 45-mile-an-hour speed limit. He accelerated to 80 miles an hour. Anaya “was swerving between multiple lanes” of traffic and was “making unsafe lane changes” at 80 miles an hour. With police in pursuit, he went through red lights at intersections.

Anaya drove through areas near a shopping center, restaurants, and businesses “with a complete disregard for the safety of others.” Drivers in other vehicles had to accelerate or “brake” to avoid being hit by his truck.

Anaya entered the 118 freeway which had a speed limit of 65 miles an hour. He accelerated “to speeds of approximately 120 miles an hour.” He drove on paved and unpaved freeway shoulder lanes at speeds in “excess of 100” miles per hour. Other drivers were “accelerating or decelerating” to “avoid collisions” with his truck. He got off the freeway.

Anaya drove into a shopping center. “[P]edestrians were moving out of the way when [Anaya] drove by.” He re-entered the 118 freeway at “approximately 120 miles an hour.” Near a reduced lane “bottleneck,” other drivers had to move “partially”

into other lanes to avoid being hit by his truck. Anaya drove to a freeway exit. Horswill lost sight of him.

The California Highway Patrol continued the pursuit. Anaya stopped his truck, got out and jumped over a fence “at the bottom of the [freeway] off-ramp.” Anaya fled and the police were unable to pursue him.

Two days later Anaya went to the police station and claimed his truck had been stolen. At the time of the offense, Anaya had a beard. When he reported his truck was stolen, he was clean shaven with small cuts on his face. Nevertheless, Horswill identified Anaya as the driver of the truck on January 22.

In the defense case Anaya testified he was not the driver of the truck during the January 22nd pursuit. On that day he had parked the truck “unlocked” on the street and left the keys “[i]nside the vehicle.” He later discovered that it was missing. He went to the police station to report the missing vehicle. A police officer told him to wait, and he was arrested.

Anaya’s wife testified that on January 22 she picked up Anaya at his uncle’s house. Anaya had left his truck there for repair work.

The jury found Anaya guilty of felony evading an officer with “[w]illful [d]isregard.” The trial court denied Anaya’s motion to reduce this felony to a misdemeanor. It imposed a two-year prison sentence. It ruled that placing Anaya on probation was not appropriate.

## DISCUSSION

### *Reducing the Conviction to a Misdemeanor*

Anaya contends the trial court erred by “refusing to reduce [his] conviction to a misdemeanor.” (Capitalization omitted; Pen. Code, § 17, subd. (b).) We disagree.

“A court [has] broad discretion under [Penal Code section 17(b)] in deciding whether to reduce a wobbler offense to a misdemeanor.” (*People v. Tran* (2015) 242 Cal.App.4th 877, 887.) “A convicted defendant is not entitled to the benefits of [Penal Code] section 17(b) as a matter of right.” (*Id.* at p. 892.) “We will not disturb the court’s decision on appeal unless the party attacking the decision clearly shows the decision was irrational or arbitrary.” (*Id.* at p. 887.) “Absent such a showing, we presume the court acted to achieve legitimate sentencing objectives.” (*Ibid.*)

Here the trial court said it considered “the nature and seriousness of” this crime. That is a relevant factor in deciding whether to reduce the offense to a misdemeanor. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 978.) The court said that Anaya’s evading offense “was among the most dangerous [and] reckless that [it had] ever witnessed.” It noted the impact on the “countless neighborhoods that were affected and the freeway and surface streets.” Horswill testified that Anaya was driving at very dangerous speeds, weaving in and out of traffic “with a complete disregard for the safety of others.” The court said, “[T]his conduct is so far and away not worthy of consideration as a misdemeanor that it would be an injustice to grant that relief in my view.”

Anaya contends the trial court did not consider any factor other than the nature of the offense. The court said it was “taking into consideration” the “defendant’s lack of a prior record.” But it considered that factor to be outweighed by the dangerous nature of this crime. It also considered his attitude, demeanor and conduct at trial. (*People v. Superior Court (Alvarez)*, *supra*, 14 Cal.4th at p. 978.) Anaya has not shown that

in weighing the relevant factors the court abused its discretion. (*People v. Lai* (2006) 138 Cal.App.4th 1227, 1258.)

### *Denying Probation*

Anaya contends the trial court erred by denying his request for a grant of probation. We disagree.

“The trial court enjoys broad discretion in determining whether a defendant is suitable for probation.” (*People v. Ramirez* (2006) 143 Cal.App.4th 1512, 1530.) “To establish abuse, the defendant must show that, under the circumstances, the denial of probation was arbitrary or capricious.” (*Ibid.*) “[T]he fact that reasonable minds . . . might come to [a different] conclusion, does not warrant an interference with the discretion exercised by the sentencing court where . . . it has properly considered the facts bearing on the offense and defendant and has adequately stated reasons for its sentence choice.” (*People v. Delson* (1984) 161 Cal.App.3d 56, 63.)

In deciding whether to grant probation, the court may consider a variety of factors including: 1) “The nature, seriousness, and circumstances of the crime as compared to other instances of the same crime,” 2) whether the defendant is “remorseful”, and 3) whether he would “be a danger to others.” (Cal. Rules of Court, rule 4.414.) The court said: 1) Anaya’s actions involved one of “the most dangerous” and “reckless” ways of committing this type of offense; 2) Anaya did not accept “responsibility” for his actions; and 3) his conduct involved a “callous . . . risk to public safety.”

Anaya notes that the probation report indicated that he should be “granted probation for a period of 36 months . . . .” But the trial court “was not required to adopt the report’s favorable recommendation.” (*People v. Delson, supra*, 161 Cal.App.3d 56, 63.) “Such a recommendation is advisory only . . . and may be

rejected in its entirety.” (*Ibid.*) “Sentencing courts have wide discretion in weighing aggravating and mitigating factors.” (*People v. Lai, supra*, 138 Cal.App.4th at p. 1258.) “[A] trial court may ‘minimize or even entirely disregard mitigating factors without stating its reasons.’” (*Ibid.*)

The probation report contained a list of positive factors. But it also included “Opposing Factors,” including: 1) Anaya’s crime “caused a substantial police response including an air unit,” 2) “[Anaya] drove through a business parking lot where many pedestrians were present,” and 3) Anaya showed “no regard for the safety of other [people].” The probation officer also said the high speed chase lasted “a significant amount of time,” and notwithstanding the jury verdict, “[Anaya] continues to deny his involvement in the chase that caused an injury to an officer.” The trial court acted within its discretion. (*People v. Ramirez, supra*, 143 Cal.App.4th at pp. 1530-1531; *People v. Lai, supra*, 138 Cal.App.4th at p. 1258.)

We have reviewed Anaya’s remaining contentions and we conclude he has not shown grounds for reversal.

#### DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

TANGEMAN, J.

Matthew P. Guasco, Judge  
Superior Court County of Ventura

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