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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>WILLIAM GENE CRAWFORD,<br><br>Defendant and Appellant. | B271795<br><br>(Los Angeles County Super. Ct. No. GA097574) |

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

Theresa Osterman Stevenson, 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, Margaret E. Maxwell,

Supervising Deputy Attorney General, and Thomas C. Hsieh, Deputy Attorney General for Plaintiff and Respondent.

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A jury convicted William Gene Crawford (Crawford) of misdemeanor assault (Pen. Code, § 240[1]) and making criminal threats (§ 422, subd. (a)), a felony. The trial court sentenced Crawford to a total prison term of 35 years to life, consisting of 25 years to life on the criminal threats count pursuant to the "Three Strikes" law, plus two additional five-year terms for Crawford's prior serious or violent felony strike convictions.

On appeal, Crawford advances three principal arguments. First, he maintains that his felony conviction for making criminal threats was not supported by sufficient evidence. Second, Crawford argues that the trial court erred in denying his *Romero* motion (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*)) to strike one or both of his strike convictions. Third, Crawford contends that even if the trial court did not abuse its discretion in denying his *Romero* motion, his sentence constitutes cruel and unusual punishment under the federal and California constitutions.

We are not persuaded by any of Crawford's arguments and, accordingly, we affirm.

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

## BACKGROUND

### I. The threats and the assault

On November 20, 2015 Crawford lived in room 220 at the Highway Host Motel in Pasadena. For approximately two weeks prior to that date, Crawford had been sharing room 220 and its rent with a friend, Shetara Price (Price). They had previously shared another room at the motel. As of that date, Crawford and Price had known each other only for a few weeks.

#### A. THE INCIDENT IN ROOM 220

On that day, Crawford and Price had an argument in room 220. The argument began over the purchase of some cigarettes. The argument escalated—Crawford brandished his bicycle lock and chain, called Price a "bitch," and told her " '[b]itch, I'll kill you,' " and " 'I'll do a 187 for you,' " which Price understood to mean that he was going to kill her and that he didn't care if he went back to prison.[2]

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[2] Price also stated that Crawford struck her repeatedly during their argument in room 220, however, her accounts varied. On the day of the incident, she told one of the responding deputies that Crawford swung the chain and hit her with it. At trial, however, she testified that although Crawford swung the bicycle chain, he missed her, and that he did so deliberately in an attempt to "scare" her. Similarly, at trial, Price variously testified that Crawford either pushed her face against a table or a dresser. Price explained her inconsistencies by disclosing that she

Although Price "wasn't scared at all" during the incident in room 220, the "yelling" by her and Crawford became so heated that a neighbor, Janet Crow (Crow), who lived in room 112, which was directly below room 220, became "concerned" and went upstairs to see if "everything [was] okay." When Crow arrived at room 220, Crawford opened the door, and as soon as he did, Price called out to Crow, " 'Watch it. He has something behind his back.' " When Crow saw that Crawford was holding the lock and chain and looking "[m]ad," she "backed off because it scared [her]." Crow then told Crawford to put down the chain, that there was " 'no need for this.' " After approximately 10 minutes, after things had "calmed down," Crow returned to her room. Crow still heard Crawford and Price "bickering," but "it didn't sound like it was escalating like it was before."

B. THE INCIDENT IN ROOM 112

As Crawford and Price continued to argue, Price became a "little bit" concerned for her safety. As a result, when Crawford demanded that she give him her key to the room, Price lied and told him that it was downstairs in Crow's room. Price went outside and down to Crow's room because she knew that there were surveillance cameras and

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"smoke[s] a lot of drugs," and as a result, she "don't remember nothing."

if Crawford attacked her, the cameras would record the attack and he would go to jail.

Crawford followed Price down to Crow's room carrying the chain. As they went down the stairs, Crawford continued to yell at Price, " 'Bitch, you think I'm playing with you? You're going to give me the key. We'll see. We'll see.' "

Shortly after Price and Crawford entered Crow's room, Crawford got angry and slammed or "clotheslined" Price down on the bed. Crawford put the chain around Price's neck and choked her "like a rag doll." Right before Crawford attacked Price, he said, " 'I'll kill you, bitch.' " Then Crawford "just went crazy," saying throughout the attack, " 'Bitch, I take a 187. I'll kill you. I'll kill you.' " As Crawford attacked her, Price feared that he would, in fact, kill her. From her screams, Crow thought Price was scared.

When Crow tried to pull Crawford off Price, he told Crow, " 'I'll kill you too, bitch.' " When Crow yelled for help, Crawford dropped the chain and ran away.

After Price and Crow spoke with a 911 operator, Los Angeles County Sheriff's deputies arrived at the motel. One of the deputies interviewed Crawford, Price, and Crow. Crawford, who was "pretty cooperative and pretty calm" but also appeared angry "[a]t times," told the deputies that he and Price had had a "physical fight." To the deputy, Price appeared "visibly upset," her "hands were shaking and she

was speaking very [fast] and loud." For her part, Crow appeared shaken, "nervous."

After detaining Crawford, the deputies recovered the chain near the door to room 112 and obtained the video footage from the surveillance camera.

## II. The trial

On February 24, 2016, the People filed a three count amended information: two counts of assault with a deadly weapon (§ 245, subd. (a)(1)) and one count of criminal threats (§ 422, subd. (a)). (The verdict forms used at trial indicated that the first assault count applied to Crawford's conduct in room 220, the room he shared with Price, while the second assault count applied to Crawford's conduct in room 112, Crow's room.) In addition, the People further alleged that Crawford had previously suffered two prior serious or violent felony strike convictions—one in 1980 for assault with a deadly weapon (firearm); and one in 1991 for kidnapping to commit robbery and robbery with the use of a firearm. Crawford pleaded not guilty to the amended complaint and denied the special allegations.

During the subsequent trial, the People walked both Price and Crow step-by-step through both the 911 call and the surveillance camera footage of Price and Crawford walking down to Crow's room and then the scuffle that occurred just inside the open doorway to Crow's room.

On April 4, 2016, after a little over two hours of deliberations, the jury returned its verdict, finding Crawford not guilty on the two counts for assault with a deadly weapon, but finding Crawford guilty on the second assault count (room 112) of the lesser included offense of misdemeanor assault. In addition, the jury found Crawford guilty as charged on the criminal threats count.

**III. Posttrial proceedings**

On April 18, 2016, Crawford moved for a new trial. In denying the motion, the trial court explained that the evidence introduced at trial with regard to the criminal threats charge was "fairly strong": Crawford made "repeated statements that he was going to kill Miss Price" and that at the time he made those threats, he was holding a weapon (the bicycle chain) and the video showed that he did assault her; "under those circumstances," the trial court found that Crawford's threats were "credible and serious and immediate, and put Miss Price in fear."

On that same day, Crawford, pursuant to *Romero*, *supra*, 13 Cal.4th 497, moved the trial court to strike one or both of his prior strike convictions. Based largely on Crawford's criminal history as set forth in the probation officer's preplea report, the trial court denied the motion. While the trial court acknowledged that the 1980 conviction for assault was "fairly old," "fairly remote," it was also a "fairly serious offense." The effect of the 1980 conviction's

remoteness was diluted in the trial court's mind by the fact that Crawford failed to be a law-abiding citizen following his release from prison following that conviction—he was "returned to prison for multiple offenses," including the 1991 conviction, another "very serious crime in which he used a firearm." For his 1991 conviction, Crawford "was sentenced to life plus a year." Then, after serving 22 years in prison and being paroled, Crawford relatively quickly committed the current offense, "another serious felony." As a result of this pattern of recidivism, the trial court concluded that Crawford had "earned" the lengthy sentence mandated by the Three Strikes law.

In response to the denial of his *Romero* motion, Crawford asked the court to reduce his criminal threats conviction to a misdemeanor. The trial court denied that motion as well.

The trial court sentenced Crawford to a total prison term of 35 years to life, consisting of 25 years to life on the criminal threats count pursuant to the Three Strikes law (§ 667, subds. (b)–(i)), plus two additional five-year terms for Crawford's prior serious or violent felony strike convictions (§ 667, subd. (a)(1)).

Crawford timely appealed.

## DISCUSSION

### I. The criminal threats conviction was supported by sufficient evidence

Crawford argues that his right to due process under the Fourteenth Amendment was violated because the evidence was insufficient to support the criminal threats conviction. In particular, Crawford challenges the evidence supporting the finding that he caused Price to be in sustained fear of her life. We disagree.

#### A. STANDARD OF REVIEW

We independently review the sufficiency of the evidence supporting a conviction. (*People v. Cole* (2004) 33 Cal.4th 1158, 1213.) "In reviewing a challenge to the sufficiency of the evidence under the due process clause of the Fourteenth Amendment to the United States Constitution and/or the due process clause of article I, section 15 of the California Constitution, we review the entire record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt." (*Id.* at p. 1212.) The federal constitutional standard for determining the sufficiency of evidence is "identical" to the standard under California law. (*People v. Staten* (2000) 24 Cal.4th 434, 460.)

"In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] 'Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]' [Citation.] A reversal for insufficient evidence 'is unwarranted unless it appears "that upon no hypothesis whatever is there sufficient substantial evidence to support" ' the jury's verdict." (*People v. Zamudio* (2008) 43 Cal.4th 327, 357; accord, *People v. Manibusan* (2013) 58 Cal.4th 40, 87.) We must accept logical inferences the jury might have drawn from the evidence even if we would have concluded otherwise. (*People v. Solomon* (2010) 49 Cal.4th 792, 811–812.)

B. SUBSTANTIAL EVIDENCE SUPPORTED THE VERDICT

The elements of the crime of making a criminal threat are " '(1) that the defendant "willfully threaten[ed] to commit a crime which will result in death or great bodily injury to another person," (2) that the defendant made the threat "with the specific intent that the statement . . . is to be taken

as a threat, even if there is no intent of actually carrying it out," (3) that the threat . . . was "on its face and under the circumstances in which it [was] made, . . . so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat," (4) that the threat actually caused the person threatened "to be in sustained fear for his or her own safety or for his or her immediate family's safety," and (5) that the threatened person's fear was "reasonabl[e]" under the circumstances.' " (*In re George T.* (2004) 33 Cal.4th 620, 630.)

"Sustained fear occurs over 'a period of time "that extends beyond what is momentary, fleeting, or transitory." ' [Citation.] 'Fifteen minutes of fear . . . is more than sufficient to constitute "sustained" fear for purposes of . . . section 422.' " (*People v. Wilson* (2015) 234 Cal.App.4th 193, 201.) "Even if the encounter lasts only one minute, a person who is confronted with a [weapon] held by an angry perpetrator and who believes his or her death is imminent, suffers sustained fear." (*People v. Culbert* (2013) 218 Cal.App.4th 184, 190–191.)

Here, the evidence showed that Price and Crawford engaged in a sustained argument in room 220 and that this argument did not de-escalate after Crow's intervention but intensified. The evidence also showed that Price, in both rooms, was confronted by an angry Crawford wielding a

bicycle chain. Moreover, Price knew Crawford was an ex-convict, a "lifer" and she suspected he was not sober—at the time of the incident, Price thought Crawford was "coming down off of heroin."[3] Price was so concerned that she fled room 220 for the relative safety of Crow's room and the coverage of the motel's surveillance cameras. The evidence showed further that Crawford was so angry that he was not only trying to render Price homeless by denying her access to the room they shared (demanding her room key), but he repeatedly and unambiguously threatened to kill her, threats that he made in the privacy of room 220 and later in room 112 in Crow's presence.

Under such circumstances, we cannot say that Price's fear of immediate and serious injury or death was unreasonable. There was, in other words, sufficient credible evidence for the jury to find Crawford guilty of making criminal threats.

## II. The trial court did not abuse its discretion in denying the *Romero* motion

Crawford maintains that the trial court erred in denying his *Romero* motion. We find his argument to be without merit.

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[3] The deputy that questioned Crawford at the motel did not believe Crawford was high on drugs, but he did "smell . . . alcohol [coming] off his breath and person."

### A. STANDARD OF REVIEW AND GUIDING PRINCIPLES

California's Three Strikes law was designed to restrict the discretion of trial courts when punishing recidivist offenders " 'to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of one or more serious and/or violent felony offenses.' " (*People v. Sasser* (2015) 61 Cal.4th 1, 11.)

Section 1385, subdivision (a), however, "permit[s] a court acting on its own motion to strike prior felony conviction allegations in cases brought under the Three Strikes law." (*Romero*, *supra*, 13 Cal.4th at pp. 529–530.) "A court's discretion to strike [a] prior felony conviction allegations in furtherance of justice is limited," however, and "is subject to review for abuse." (*Id.* at p. 530.) " ' " '[I]n furtherance of justice,' requires consideration both of the constitutional rights of the defendant, and *the interests of society represented by the People*, in determining whether there should be a dismissal. [Citations.]" [Citations.] At the very least, the reason for dismissal must be "that which would motivate a reasonable judge." ' " (*Id.* at pp. 530–531.)

We apply the deferential abuse of discretion standard to the trial court's decision to not dismiss any of Crawford's prior felony convictions for sentencing purposes. (*People v. Williams* (1998) 17 Cal.4th 148, 162 (*Williams*).) "Although variously phrased in various decisions [citation], [the standard] . . . asks in substance whether the ruling in question 'falls outside the bounds of reason' under the applicable law and the relevant facts." (*Ibid.*)

"[A] court abuses its discretion if it dismisses a case, or strikes a sentencing allegation, solely 'to accommodate judicial convenience or because of court congestion.' [Citation.] A court also abuses its discretion by dismissing a case, or a sentencing allegation, simply because a defendant pleads guilty. [Citation.] Nor would a court act properly if 'guided solely by a personal antipathy for the effect that the three strikes law would have on [a] defendant,' while ignoring 'defendant's background,' 'the nature of his present offenses,' and other 'individualized considerations.' " (*Romero*, *supra*,13 Cal.4th at p. 531.)

In *Williams*, *supra*, 17 Cal.4th 148, our California Supreme Court described the factors a court should consider when exercising its section 1385 discretion in a Three Strikes case. It noted that in deciding whether to dismiss a strike " 'in furtherance of justice' . . . , or in reviewing such a ruling, the court in question must consider whether, in light of the nature and circumstances of his [or her] present felonies and prior serious and/or violent felony convictions, and the particulars of his [or her] 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 [or she] had not previously been convicted of one or more serious and/or violent felonies." (*Id.* at p. 161.) The sentence to be meted out to the defendant "is also a relevant consideration . . . in fact, it is the overarching consideration because the underlying purpose of striking

prior conviction allegations is the avoidance of unjust sentences." (*People v. Garcia* (1999) 20 Cal.4th 490, 500.)

It is the defendant's burden as the party attacking the sentencing decision to show that it was arbitrary or irrational, and, absent such showing, there is a presumption that the court " ' "acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review." ' " (*People v. Carmony* (2004) 33 Cal.4th 367, 377.) Such a discretionary decision " ' "will not be reversed merely because reasonable people might disagree." ' " (*Ibid.*) In other words, "[i]t is not enough to show that reasonable people might disagree about whether to strike one or more of his prior convictions. Where 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." (*People v. Myers* (1999) 69 Cal.App.4th 305, 310 (*Myers*).) "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." (*Carmony*, at p. 378.)

We presume the trial court considered all relevant factors in the absence of an affirmative record to the contrary. (*Myers*, *supra*, 69 Cal.App.4th at p. 310.)

B. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION

This is not the extraordinary case imagined by our Supreme Court where there can be no doubt that the defendant, although a career criminal, nevertheless falls outside the spirit of the Three Strikes law. (*People v. Carmony*, *supra*, 33 Cal.4th at p. 378.) There is little about Crawford's case that suggests, much less compels, such a conclusion.

Among other things, the trial court considered the probation officer's report, which summarized Crawford's criminal history. Among other things, the report stated that Crawford has an "extensive criminal record," which includes not only the prior convictions for assault with a deadly weapon and kidnapping-armed robbery, but also multiple driving-while-intoxicated convictions, shooting at an inhabited building, and vehicle theft. In addition, the report further indicated that since being released from prison, Crawford violated parole repeatedly by testing positive for methamphetamines and alcohol. The report concluded that Crawford has established a "pattern of criminal conduct which threatens public safety."

Crawford acknowledges his criminal history but argues that the remoteness of his prior strikes and his current efforts to be a be good citizen—"I've been employed, [tried] to

pay my own way"—put him outside of the spirit of the Three Strikes law.

Crawford's argument suffers from a number of problems. First, the Three Strikes law explicitly states that "[t]he length of time between the prior serious and/or violent felony conviction and the current felony conviction shall not affect the imposition of sentence." (§§ 667, subd. (c)(3); 1170.12, subd. (a)(3).) Second, where, as here, the defendant has a long criminal history, courts do not regard remoteness as a significant factor weighing in favor of granting a *Romero* motion. (See *People v. Gaston* (1999) 74 Cal.App.4th 310, 321 [remoteness of prior strikes "not significant" given defendant's lengthy criminal history]; *People v. Strong* (2001) 87 Cal.App.4th 328, 346 [same].) For example, in *People v. Pearson* (2008) 165 Cal.App.4th 740, 749, the Court of Appeal rejected defendant's remoteness argument because the current offense was violent, the defendant's criminal history spanned 25 years, and he had performed poorly on probation and parole. As one of the leading cases in this field makes clear, *Williams*, *supra*, 17 Cal.4th 148, remoteness and attempts at good citizenship following release are not enough to put a defendant outside the spirit of the Three Strikes law.

In *Williams*, *supra*, 17 Cal.4th 148, the defendant was charged with driving under the influence of phencyclidine (PCP) with three prior convictions for the same offense within the preceding seven years. (*Id.* at p. 152.) The trial court had vacated one strike finding (attempted robbery) and

sentenced the defendant to a total term of nine years. (*Id*. at p. 157.) The Court of Appeal, finding an abuse of discretion in vacating the third strike, reversed; granting review, the Supreme Court affirmed the Court of Appeal. The defendant in *Williams*, like Crawford, had a lengthy history of criminal offenses—seventeen convictions or parole violations—as an adult, spanning the 15 years prior to his arrest for the instant offense. (*Id*. at pp. 154, 163–165.) However, as with Crawford, the more serious offenses—that is, the convictions for attempted robbery and rape that were alleged to bring the case within the Three Strikes law—had been committed by the defendant in *Williams* many years before the instant crime. The defendant in *Williams*, apparently like Crawford, had struggled with a drug problem. (*Id*. at p. 163.) However, our Supreme Court found those facts were not enough to put the defendant in *Williams* outside the spirit of the Three Strikes law. Summing up, the court wrote that in light of "the nature and circumstances of his present felony of driving under the influence, which he committed in 1995, and his prior conviction for the serious felony of attempted robbery and his prior conviction for the serious and violent felony of rape, both of which he suffered in 1982, and also in light of the particulars of his background, character, and prospects, which were not positive, Williams *cannot* be deemed outside the spirit of the Three Strikes law *in any part*, and hence may not be treated as though he had not previously been convicted of those

serious . . . or violent felonies." (*Id.* at pp. 162–163, italics added.)

At the time of the instant crime, Crawford had been paroled from prison following the kidnapping–armed robbery conviction. If, as Crawford told the trial court, he was trying to be a productive member of society after being released from prison on parole, if he had truly turned a corner on his prior life as a violent criminal, he would not have assaulted Price in Crow's room or made threats that put Price in reasonable fear of her life or grave harm. Moreover, we cannot say that the assault on Price and the making of criminal threats were completely aberrant acts. Since being released from prison, Crawford has not been a model citizen—he committed multiple parole violations. Like the defendant in *Williams*, Crawford failed to add "maturity to age." (*Williams*, *supra*, 17 Cal.4th at p. 163.)

In sum, we conclude on the record before us that the trial court did not abuse its discretion when it elected not to strike one or both of Crawford's prior serious or violent felony convictions. The trial court considered, weighed and balanced the instant offenses against Crawford's criminal history and his background, character, and prospects. As in *Williams*, *supra*, 17 Cal.4th 148, Crawford's prior convictions indicated that the defendant " 'had been taught, through the application of formal sanction, that [such] criminal conduct was unacceptable—but had failed or refused to learn his lesson.' " (*Id.* at p. 163.) Because Crawford has failed to

show that the trial court's decision was arbitrary or irrational, we must affirm.

## III. The trial court did not abuse its discretion in refusing to reduce the criminal threats conviction to a misdemeanor

Crawford contends that the trial court erred by not reducing his criminal threats conviction from a felony to a misdemeanor. We are unconvinced by his argument.

### A. STANDARD OF REVIEW AND GUIDING PRINCIPLES

Pursuant to section 17, subdivision (b), a trial court may reduce a so-called "wobbler" offense originally charged as a felony to a misdemeanor.[4] The Three Strikes Law does not preclude a trial court from exercising its discretion under section 17, subdivision (b)(1), to reduce an offense to a misdemeanor. (*People v. Superior Court* (*Alvarez*) (1997) 14 Cal.4th 968, 979 (*Alvarez*).) The crime of making a criminal threat is a "wobbler," meaning it can be treated, in the trial

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[4] "[T]he term 'wobbler,' as used here, does not appear in the Penal Code or in the Merriam-Webster Dictionary. Instead, 'wobbler' is a legal term of art of recent vintage, and its use is limited primarily to attorneys, judges, and law enforcement personnel who are familiar with criminal law." (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 902, fn. omitted.) " 'Wobblers' are 'those offenses punishable either as felonies or misdemeanors, in the discretion of the court. *In the jargon of the criminal law*, [such] offenses are known as "wobblers." ' " (*Ibid.*, fn. omitted, quoting *People v. Municipal Court (Kong)* (1981) 122 Cal.App.3d 176, 179.)

court's discretion, as either a felony or a misdemeanor. (§§ 17, subd. (b)(1), 422, subd. (a).)

"[T]he fact a wobbler offense originated as a three strikes filing will not invariably or inevitably militate against reducing the charge to a misdemeanor. Nonetheless, the current offense cannot be considered in a vacuum; given the public safety considerations underlying the three strikes law, the record should reflect a thoughtful and conscientious assessment of all relevant factors including the defendant's criminal history." (*Alvarez*, *supra*, 14 Cal.4th at p. 979.) In other words, the focus is on "the defendant's criminal past and public safety." (*Id.* at pp. 981–982.)

"On appeal, . . . '[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.' [Citation.] Concomitantly, '[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." ' " (*Alvarez*, *supra*, 14 Cal.4th at pp. 977–978.) In short, our standard of review is "extremely deferential and restrained." (*Id.* at p. 981.)

B. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION

Here, Crawford has failed to meet his heavy burden of showing that the trial court's decision was either irrational

or arbitrary. The trial court's detailed explanation of its ruling in connection with the *Romero* motion leaves no doubt that it undertook an "individualized consideration of the offense, the offender, and the public interest." (*Alvarez*, *supra*, 14 Cal.4th at p. 978.) The record supports its conclusions. Given Crawford's serious and violent criminal history, his repeatedly poor performance upon release from prison, and legitimate concerns about public safety if treated leniently, we find the trial court did not abuse its considerable discretion in deciding not to reduce the criminal threats conviction to a misdemeanor.

## IV. Crawford's sentence does not constitute cruel and/or unusual punishment

Crawford contends his sentence of 35 years to life constitutes cruel and unusual punishment in violation of the Eight Amendment to the United States Constitution and cruel or unusual punishment in violation of the California Constitution. We disagree.

### A. CRAWFORD FORFEITED HIS ARGUMENTS

As a preliminary matter, Crawford failed to raise these arguments below. As a result, those arguments are waived on appeal. (See, e.g., *People v. Norman* (2003) 109 Cal.App.4th 221, 229; *People v. Vallejo* (2013) 214 Cal.App.4th 1033, 1045; *People v. Kelley* (1997) 52 Cal.App.4th 568, 583.) "Nonetheless, we shall reach the merits under the relevant constitutional standards, in the

interest of judicial economy to prevent the inevitable ineffectiveness-of-counsel claim." (*Norman*, at p. 230.)

B. CRAWFORD'S CONSTITUTIONAL CLAIMS FAIL

The Eighth Amendment to the United States Constitution prohibits "cruel *and* unusual" punishment. (U.S. Const., 8th Amend., italics added.) It prohibits " 'only extreme sentences that are "grossly disproportionate" to the crime.' " (*Ewing v. California* (2003) 538 U.S. 11, 23 (lead opn. of O'Connor, J.) (*Ewing*).) The California Constitution proscribes "cruel *or* unusual punishment." (Cal. Const., art. I, § 17, italics added.) This prohibition may be violated if a punishment is " 'so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity.' " (*People v. Cartwright* (1995) 39 Cal.App.4th 1123, 1136.)

Although there is a considerable overlap in the federal and state approaches to determining whether a punishment is cruel and/or unusual, we consider each separately because the distinction in wording is "purposeful and substantive rather than merely semantic." (*People v. Carmony* (2005) 127 Cal.App.4th 1066, 1085.)

1. *Standard of review*

"Whether a punishment is cruel and/or unusual is a question of law subject to our independent review, but underlying disputed facts must be viewed in the light most

favorable to the judgment." (*People v. Palafox* (2014) 231 Cal.App.4th 68, 82.)

2. *Crawford's federal constitution claim*

The United States Supreme Court considered the constitutionality of substantial indeterminate prison terms under California's Three Strikes statutes in two companion cases. In the first case, *Ewing*, *supra*, 538 U.S. 11, the court directly confronted the issue "whether the Eighth Amendment prohibits the State of California from sentencing a repeat felon to a prison term of 25 years to life under the State's 'Three Strikes and You're Out' law." (*Id.* at p. 14.) The indeterminate term was imposed after a grand theft of three golf clubs together worth in total almost $1,200. (*Id.* at pp. 18–20.) A plurality (O'Connor, J., Rehnquist, C.J., Kennedy, J.) reasoned that "[t]he Eighth Amendment, which forbids cruel and unusual punishments, contains a 'narrow proportionality principle' that 'applies to noncapital sentences.' " (*Id.* at p. 20.) "In weighing the gravity of Ewing's offense, we must place on the scales not only his current felony, but also his long history of felony recidivism." (*Id.* at p. 29.) "[T]he State's public-safety interest in incapacitating and deterring recidivist felons" is a "legitimate penological goal." (*Ibid.*) The indeterminate life sentence "is not *grossly disproportionate* and therefore does

not violate the Eighth Amendment's prohibition on cruel and unusual punishments."[5] (*Id.* at pp. 30–31, italics added.)

In the second case, *Lockyer v. Andrade* (2003) 538 U.S. 63 (*Andrade*), which involved federal habeas corpus review, the court concluded that it was not a clear violation of the federal prohibition of cruel and unusual punishment to impose two consecutive terms of 25 years to life under California's Three Strikes statutes for Andrade's two crimes of petty theft with a prior. The thefts involved the taking of videotapes worth $84.70 from one store and $68.84 from another store. (*Id.* at pp. 66–68.) A majority (O'Connor, J., Rehnquist, C.J., Scalia, J., Kennedy, J., and Thomas, J.) determined that "[t]he gross disproportionality principle reserves a constitutional violation for only the extraordinary case" (*id.* at p. 77), that it is "applicable only in the 'exceedingly rare' and 'extreme' case" (*id.* at p. 73), and that Andrade's case was not such a case.

Here, unlike the property crimes at issue in *Ewing*, *supra*, 538 U.S. 11 and *Andrade*, *supra*, 538 U.S. 63, Crawford's instant conviction involved an assault (albeit a misdemeanor) and the making of criminal threats, a serious felony. Moreover, Crawford had a history of committing

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[5] Two concurring justices (Scalia, J., Thomas, J.) disavowed the existence of a proportionality principle, but still concluded that the sentence did not violate the Eighth Amendment. (*Id.* at pp. 31–32.)

both nonviolent and violent crimes—his prior strike convictions were for assault with a deadly weapon and kidnapping–robbery and both prior strike convictions involved the use of a firearm. As a result, Crawford served two prison terms, the second of which was 22 years in length. Despite his long incarceration, Crawford committed the instant crime just two and a half years after being paroled.

In light of *Ewing*, *supra*, 538 U.S. 11 and *Andrade*, *supra*, 538 U.S. 63, we hold that Crawford's sentence was not grossly disproportionate to his crime. "We therefore need not discuss defendant's arguments about intrastate and interstate comparisons regarding his federal claim." (*People v. Haller* (2009) 174 Cal.App.4th 1080, 1091.)

3. *Crawford's California constitution claim*

In determining whether a punishment is cruel or unusual, our Supreme Court has identified three factors for the reviewing court to consider: (1) the nature of the offense and the offender; (2) a comparison with the punishment imposed for more serious crimes in the same jurisdiction; and (3) a comparison with the punishment imposed for the same offense in different jurisdictions. (*In re Lynch* (1972) 8 Cal.3d 410, 425–427.) "Determinations whether a punishment is cruel or unusual may be made based on the first prong alone," i.e., the nature of the offense and the offender. (*People v. Ayon* (1996) 46 Cal.App.4th 385, 399,

disapproved on other grounds in *People v. Deloza* (1998) 18 Cal.4th 585, 600, fn. 10.) A defendant bears a "considerable burden" to demonstrate his sentence amounts to cruel or unusual punishment. (*People v. Wingo* (1975) 14 Cal.3d 169, 174.)

" 'To determine whether a sentence is cruel or unusual as applied to a particular defendant, a reviewing court must examine the circumstances of the offense, including its motive, the extent of the defendant's involvement in the crime, the manner in which the crime was committed, and the consequences of the defendant's acts. The court must also consider the personal characteristics of the defendant, including age, prior criminality, and mental capabilities.' " (*People v. Leonard* (2007) 40 Cal.4th 1370, 1426–1427; *People v. Dillon* (1983) 34 Cal.3d 441, 479.) The court must give great deference to the penalty prescribed by the Legislature; the Legislature "is in the best position to evaluate the gravity of different crimes and to make judgments among different penological approaches." (*People v. Martinez* (1999) 76 Cal.App.4th 489, 494.) "Only in the rarest of cases could a court declare that the length of a sentence mandated by the Legislature is unconstitutionally excessive." (*Ibid.*)

Here, as discussed above, Crawford has a long criminal history involving both nonviolent and violent crimes. The sentence at issue was imposed as the result of yet another

violent crime and the making of violent threats. Moreover, as also discussed above, Crawford, despite repeated and often long periods of incarceration, has not demonstrated an ability to be a law-abiding citizen. Consequently, based on the nature of the offense and the offender, we hold that Crawford's sentence was not cruel or unusual under the state Constitution. (See, e.g., *People v. Romero* (2002) 99 Cal.App.4th 1418, 1431–1433 [third strike term for felony petty theft with prior]; *People v. Martinez* (1999) 71 Cal.App.4th 1502, 1510–1517 [third strike term for drug possession].)

**DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.