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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE MANUEL GAMBOA,

Defendant and Appellant.

B255969

(Los Angeles County
Super. Ct. No. KA102279)

APPEAL from a judgment of the Superior Court of Los Angeles County. Steven D. Blades, Judge. Affirmed.

Jonathan B. Steiner and Richard Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Noah P. Hill and Garrett A. Gorkitsky, Deputy Attorneys General, for Plaintiff and Respondent.

Evidence presented at a preliminary hearing showed that, on June 20, 2013, about 9:15 a.m., the police pursued Jose Manuel Gamboa for approximately 12 minutes after their failed attempt to make a traffic stop. As the police pursued him, Gamboa drove erratically at high rates of speed, forcing two pedestrians to jump out of his way to avoid being hit. He also struck several cars before stopping his vehicle. Based on this evidence, an information, filed on July 22, 2013, charged Gamboa with driving in willful or wanton disregard for the safety of persons or property while fleeing from a pursuing police officer (Veh. Code, § 2800.2, subd. (a)). The information specially alleged that Gamboa had a prior serious or violent felony conviction for assault with a firearm (Pen. Code, § 245, subd. (a)(2)), which qualified as a strike under the “Three Strikes” law (*id.* at §§ 667, subds. (b)-(i), 1170.12, subds. (a-d)), and that he had served five prior prison terms within the meaning of Penal Code section 667.5, subdivision (b).

Gamboa entered an open no contest plea to the Vehicle Code section 2800.2, subdivision (a), charge and admitted the special allegations. The trial court sentenced him to eight years in state prison, consisting of the upper term of three years for the Vehicle Code section 2800.2, subdivision (a), violation, doubled pursuant to the Three Strikes law, plus one year for each of two of the prior-prison-term enhancements. The court struck the remaining three prior-prison-term enhancements. On appeal, Gamboa contends that the court abused its discretion by denying his motion to dismiss his strike conviction. We disagree and thus affirm the judgment.

DISCUSSION

Penal Code section 1385, subdivision (a), authorizes a trial court to exercise its discretion to dismiss a defendant’s prior serious or violent felony conviction. (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 529-530.) “[T]he court in question 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 his background, character, and prospects, the defendant may be deemed outside the [Three Strikes] scheme’s spirit, in whole or in part” (*People v. Williams* (1998) 17 Cal.4th 148, 161.) Absent an affirmative disclosure on the record to the contrary, we

presume a court considered all pertinent factors in determining whether to dismiss a prior serious or violent felony conviction. (*People v. Myers* (1999) 69 Cal.App.4th 305, 310.)

In denying the motion to dismiss Gamboa's strike conviction, the trial court stated, "I'm troubled by the five prior prison commitments, and . . . there was considerable time in prison and not much time in between prison sentences. And I think since the strike it looks like it was 15 years ago, but he served 13 and a half years in prison for those 15 years. So I think in looking at the Three Strike factors that the court has taken into consideration, they militate against granting the motion and I don't think this is the type of case that warrants striking the strike, so that motion is denied."

Gamboa maintains that he falls outside the spirit of the Three Strikes law because he has "put his serious criminal past behind him and is now more likely a criminal only because he is an addict." In support of his claim regarding his minimal criminal record, he points out that (1) he was convicted of the strike in 1999, approximately 15 years before the current offense, when he was only 22 years old; (2) the trial court was under the mistaken belief that he was free of custody for only 18 months between the time of the strike conviction and the current offense, but it likely was four years; and (3) in that four-year period he committed only two minor crimes, second degree burglary and possession of a controlled substance. We are not persuaded.

Gamboa's record supports the trial court's conclusion that he does not fall outside the spirit of the Three Strikes law. He committed serious crimes both before the 1999 strike as well as after his release from prison for that strike. In 1995 or 1996, he was convicted for the same violation as in the instant case. In 1996, he was convicted of possession of a firearm by a felon. Thereafter, in 1999, he was convicted of the strike offense, assault with a firearm, for which he served a prison term. After his release from prison, he continued his criminal conduct. He was convicted of second degree burglary in 2009 and of possession of a controlled substance in 2012. He served a prison term for both convictions. Most recently, he was convicted of the current offense.

No evidence supports Gamboa's claim that he was free of custody for four years, not 18 months, between the strike and the current offense. In any case, whether the time

out of prison was 18 months or four years or something in between, he spent at least 11 of the 15 years in prison and continued to engaged in criminal conduct when he was out of prison, committing three crimes in the relatively short period he was out of prison. And, in the current offense, he endangered people's lives by driving at high rates of speed during the 12-minute pursuit, nearly striking two pedestrians and hitting several cars.

Gamboa contends that the trial court did not give sufficient weight to the role that addiction played in his criminality. Assuming he is an addict, addiction per se does not take a person outside the spirit of the Three Strikes law. And, when viewed with his criminal history, his addiction does not require a different result.

Based on Gamboa's circumstances, the quantity and nature of his past and current offenses, and the willful disregard for human life demonstrated in the current offense, the trial court acted within its discretion in determining that Gamboa did not fall outside the spirit of the Three Strikes law.¹

DISPOSITION

The judgment is affirmed.

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ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.

¹ As noted, the trial court struck three of the five prior-prison-term enhancements admitted by Gamboa, imposing a prison sentence of eight years, rather than the maximum 11-year sentence.