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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.

RONALD BATISTE,

Defendant and Appellant.

B232175

(Los Angeles County Super. Ct.
No. BA367787)

APPEAL from a judgment of the Superior Court of Los Angeles County, Anne H. Egerton, Judge. Affirmed.

Elizabeth A. Missakian, 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, Assistant Attorney General, Eric Reynolds and Lauren E. Dana, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Ronald Batiste was charged in an information with possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)). The information also alleged defendant had suffered four prior serious or violent felony convictions within the meaning of the three strikes law (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)),¹ and served four prior prison terms (§ 667.5, subd. (b)). The prior conviction allegations included a 1983 first degree murder (§ 187, subd. (a)) and three convictions in 1994 for forcible lewd act upon a child (§ 288, subd. (b)).

The jury found defendant guilty of the charged offense. All the recidivist allegations were found true.

Defendant filed a request that the trial court strike the prior serious felony convictions allegation pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*). The court considered, but ultimately denied, defendant's request to strike the prior convictions. The court sentenced defendant to 25 years to life in state prison.

Defendant contends the trial court abused its discretion in denying his *Romero* request. We affirm the judgment.

FACTS

Defendant's Arrest for Possession of a Controlled Substance

On February 10, 2010, Los Angeles Police Officers Luis Lopez and Juan Hernandez pulled over a vehicle with an expired registration for investigation. Defendant was the driver of the vehicle, which was registered to the passenger, Charletta White. Defendant, who did not have a valid driver's license, stated he was on active parole. He agreed to allow Officer Hernandez to conduct a search of himself and the vehicle. Officer Hernandez found a baggy in defendant's right coin pocket that contained two small blue tablets, which the officer identified as resembling ecstasy. Defendant told

¹ Unless otherwise indicated, all statutory references are to the Penal Code.

Officer Hernandez the tablets were ecstasy. The officers described defendant's behavior as normal and cooperative. Neither officer believed defendant was under the influence of narcotics at the time of the search. Defendant was arrested for possession of a controlled substance. Glenn Johnson, a Los Angeles Police Department criminalist, analyzed the tablets and confirmed the presence of M.D.M.A., commonly known as ecstasy. Johnson determined that the weight of the tablets was 0.45 grams.

The Sentencing Hearing

The trial court ruled on defendant's *Romero* request at the sentencing hearing on March 16, 2011. The court stated it considered the *Romero* request and all of its attachments, the written opposition, and all additional documents submitted the day before the hearing, including a letter from a Mr. or Mrs. Johnson, one of defendant's parole officers.

Preliminarily, the trial court emphasized that although defendant requested that the court dismiss "one or more" of his prior convictions, defendant had four strikes against him. Thus, at least three of the strikes would have to be dismissed in order to afford defendant any real relief.

The trial court next articulated the factors it must consider when determining whether to dismiss a strike conviction: "Under *Romero* and *Williams*²] and all of the cases . . . there are three sets of facts essential for the court to consider a *Romero* motion. First is the nature and circumstances of the present offense, second is the nature and circumstances of the defendant's prior offenses, and third is the particulars of the defendant's background, character and prospects." The court then proceeded to evaluate all three *Romero* factors.

The trial court described the present offense as "somewhat minor" and "not the crime of the century," but that emphasized that "someone with [defendant's] history, to

² *People v. Williams* (1998) 17 Cal.4th 148.

be getting high is, I think, problematic It's not a petty theft or . . . somebody stealing socks" The court distinguished defendant's case from the type of case that would not fall within the spirit of the three strikes law, stating "this isn't a situation where somebody has a fairly remote residential burglary and picks up a petty theft or something."

The trial court next recounted defendant's criminal history. The court emphasized that "[t]he prior offenses are extremely, extremely serious and egregious." Defendant's criminal history began when he was charged with murder at age 17. On December 14, 1983, he pled guilty to first degree murder and admitted use of a gun. Defendant first said he acted in self-defense, but eventually admitted to shooting and killing the victim during the commission of a robbery. Defendant had offered to act as a go-between for the victim in a deal to purchase phencyclidine (PCP). Defendant instead used a handgun to rob the victim of about \$50, which the victim planned to use to purchase the PCP. Defendant shot and killed the victim when the victim attempted to grab the gun. Defendant was sentenced to 27 years to life for the killing.

Defendant was discharged from the California Youth Authority in June 1991, when he was 25 years old. Approximately 10 months after leaving the California Youth Authority, defendant was charged with either felony or misdemeanor evading an officer and placed on formal probation for three years.³

In August 1993, defendant was charged with multiple counts of rape, oral copulation, and other lewd acts on a child. The child reported the sexual abuse to the authorities when she was 12. She stated that the abuse started when she was 11, less than a year after defendant had completed parole on the murder charge according to the prosecutor's calculations. The abuse began as fondling and then progressed to intercourse and oral sex. The victim reported that defendant abused her on a regular basis, and that after approximately five incidents, she stopped keeping track of individual

³ The trial court stated that it was unclear whether the evading conviction was felony or misdemeanor, and emphasized that regardless defendant was placed on formal probation.

occurrences. Defendant threatened the victim to induce her silence. He was convicted of three counts of forcible lewd acts on a child. Defendant was sentenced to 24 years and paroled in September of 2007.

Two months later, in November 2007, defendant violated his parole and was returned to state prison. He was subsequently released in July 2008. He was arrested for the present offense of possession of a controlled substance less than two years after his release.

Finally, the trial court discussed favorable letters defendant submitted from two of his former parole officers, Agents Mawhinney and Johnson. The court noted the letter from Agent Mawhinney stated defendant was personable, relatively compliant, attended continuing education, and managed to remain violation-free until his arrest for possession of ecstasy. The letter from Agent Johnson was also positive, stating that defendant was cooperative, made himself available for parole supervision, and participated in outpatient sessions. Agent Johnson's letter also stated that all defendant's tests were "clean" and that he was in compliance with the terms of his parole when Agent Johnson made unannounced visits.

The trial court evaluated defendant's prior convictions and criminal history against the minor nature of the current offense and the favorable statements from defendant's parole officers, and elected not to strike the prior serious felony convictions. After weighing all three *Romero* factors, the court found that "[t]he problem with the *Romero* motion, in addition to the fact that I would have to strike three of four strikes, is that the prior offenses are about the most serious you can imagine . . . [a]nd [defendant] had not been out of custody that long at the time he picked this up." The court concluded that defendant "[fell] within the spirit and the letter of the three strikes law."

DISCUSSION

Defendant contends the trial court abused its discretion in failing to strike his prior serious felony convictions pursuant to section 1385 and *Romero, supra*, 13 Cal.4th 497,

because the court relied primarily on the nature of the prior convictions and failed to adequately consider the minor nature of the instant offense or defendant's character and background. We find no merit in this argument.

Under section 1385, the trial court has discretion to strike a prior felony conviction allegation in furtherance of justice. (*Romero, supra*, 13 Cal.4th at pp. 529-530.) In order to do so, the court "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." (*People v. Williams* (1998) 17 Cal.4th 148, 161 (*Williams*).) A trial court must enter a statement of reasons in the minutes of the court when dismissing a prior conviction; however, it is not required to "explain its decision not to exercise its power to dismiss or strike." (*People v. Carmony* (2004) 33 Cal.4th 367, 376 (*Carmony*).)

This court reviews a ruling upon a motion to strike a prior felony conviction under a deferential abuse of discretion standard. (*Williams, supra*, 17 Cal.4th at p. 162.) The defendant bears the burden of establishing that the trial court's decision was unreasonable or arbitrary. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977-978 [presumption that trial court acts to achieve lawful sentencing objectives].) "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" (*People v. Myers* (1999) 69 Cal.App.4th 305, 310 (*Myers*).) "It is not enough to show that reasonable people might disagree about whether to strike one or more of [the defendant's] prior convictions." (*Ibid.*) "[A] trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it." (*Carmony, supra*, 33 Cal.4th at p. 377.)

It is clear from the record that the trial court considered all of the *Romero* factors and determined that, on balance, defendant fell within the spirit of the three strikes law. The court weighed the minor nature of the instant conviction, the favorable letters from

defendant's parole officers, and defendant's youth at the time of his murder conviction against the very serious and violent nature of his four prior convictions, the short time intervals between his release from prison and each subsequent crime, and defendant's criminal history generally.

Defendant asserts that "[e]ven in the case of defendants who have extensive criminal histories, the minor and nonviolent and nonaggravated nature of the instant offense is a significant factor that can support the dismissal of "strike" priors."

Defendant overlooks the fact that although the court *may* give significant weight to the minor nature of the instant offense, it is not an abuse of discretion for the court to decide not to do so. (*See Myers*, 69 Cal.App.4th at p. 310.) The court is required to consider the nature of the present offense, but it has discretion to determine what weight to give this factor. (*Ibid.*)

In essence, defendant is asking this court to reweigh the evidence and substitute its judgment for that of the trial court. This we will not do. There is nothing irrational or arbitrary about the trial court's decision. Defendant committed murder to rob his victim of approximately \$50 and continually sexually abused an 11-year-old child over a significant time period less than a year after his release for the murder conviction. He has a history of committing serious, violent crimes and has repeatedly violated the law soon after being released from custody. It is not at all unreasonable that these considerations should outweigh the nature of his present conviction for possession of a controlled substance and his parole officers' letters stating they found defendant to be generally compliant. We hold the trial court did not abuse its discretion in denying defendant's *Romero* request. (*See Carmony, supra*, 33 Cal.4th at pp. 378-380; *Myers, supra*, 69 Cal.App.4th at p. 310.)

DISPOSITION

The judgment is affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

MOSK, J.