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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.

MIGUEL RAMIREZ
VILLASENOR, JR.,

Defendant and Appellant.

2d Crim. No. B290007
(Super. Ct. No. 2017022137)
(Ventura County)

Miguel Ramirez Villasenor, Jr., appeals from a judgment after a jury convicted him of committing a lewd act upon a child (Pen. Code,¹ § 288, subd. (c)(1)), and the trial court found true allegations that he suffered a prior serious or violent felony conviction within the meaning of the “Three Strikes” law (prior strike) and served three prior prison terms. (§§ 667 subds. (c) & (e), 1170.12, 667.5, subd. (b).) The court sentenced him to

¹ Further unspecified statutory references are to the Penal Code.

seven years in state prison (upper term of three years, doubled for the prior strike, plus one year for a prior prison term). It dismissed two prior prison term allegations.

Villasenor contends the trial court erred when it denied his *Romero*² motion to dismiss his prior strike. We affirm.

FACTS AND PROCEDURAL HISTORY

In 2017, Villasenor went to his friend's house while his friend was not at home and walked into the bedroom of his friend's 15-year-old daughter, M.O. Villasenor lay down on the bed next to M.O., pulled down her pants, and touched her vagina for 10 to 15 minutes. M.O. told Villasenor to stop multiple times, but he refused.

Before and after trial, Villasenor filed a *Romero* motion to dismiss the prior strike (arson, § 451, subd. (c)). The trial court denied the motion.

DISCUSSION

We review rulings on *Romero* motions for abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 376 (*Carmony*)). A trial court has discretion to dismiss a prior strike for sentencing purposes if the defendant falls outside the spirit of the Three Strikes law. (§ 1385; *Romero, supra*, 13 Cal.4th at pp. 529-530.) The 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 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

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

previously been convicted of one or more serious and/or violent felonies.” (*People v. Williams* (1998) 17 Cal.4th 148, 161.)

A denial of a *Romero* motion is an abuse of discretion only in “limited circumstances” where a court was unaware of its discretion, considered impermissible factors, or otherwise acted in an arbitrary, capricious, or patently absurd manner. (*Carmony, supra*, 33 Cal.4th at p. 378.) In the absence of such a showing, we presume the court acted to achieve legitimate sentencing objectives and will not set aside its discretionary determination. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977-978.)

The trial court did not abuse its discretion when it denied the *Romero* motion. Villasenor, who was 46 years old, had a continuous 30-year criminal history. His first offense, theft (§ 484, subd. (a)), occurred in 1988 when he was 16 years old. He then committed robbery (§ 211) and two drug offenses (Health & Saf. Code, § 11550, subd. (a)) before he committed the prior strike in 1996. After the prior strike, Villasenor continued to commit crimes: he was convicted of forgery/use of access cards and two drug offenses in 2003 (§ 484f, subd. (b); Health & Saf. Code, § 11364), a drug offense in 2007 (Health & Saf. Code, § 11357, subd. (c)), two drug offenses in 2009 (Health & Saf. Code, §§ 11364, 11550, subd. (a)), two drug offenses in 2011 (Health & Saf. Code, § 11378), and one drug offense and failure to register as an arsonist in 2015 (Health & Saf. Code, § 11550, subd. (a); § 457.1, subd. (b)(1)). In sum, Villasenor’s criminal history and background reflects that he was the type of ““revolving door” career criminal to whom the Three Strikes law is addressed.’ [Citation.]” (*Carmony, supra*, 33 Cal.4th at p. 379; see also *People v. Pearson* (2008) 165 Cal.App.4th 740, 749-750 (*Pearson*))

[appellant's age (40 years old) and 25-year continuous criminal history were facts supporting a denial of a *Romero* motion].) The court acted within its discretion when it denied the *Romero* motion.

Villasenor contends the trial court did not give sufficient weight to several mitigating factors, including that he did not commit a serious or violent offense since the prior strike; the prior strike was different in nature from his other offenses; his current offense was “relatively non-violent” and he had no prior sex offenses; and he was employed with a “stable home environment.” It is presumed that the trial court considered all relevant factors in denying a *Romero* motion. (*Pearson, supra*, 165 Cal.App.4th at p. 749.) The record reflects that the court considered the written motion, oral arguments, and Villasenor's probation report before denying the motion. Moreover, even if the prior strike was “out of character,” a defendant who falls squarely within the [Three Strikes] law's letter does not take himself outside its spirit by the additional commission of a virtually uninterrupted series of nonviolent felonies and misdemeanors over a lengthy period [of time].” (*People v. Strong* (2001) 87 Cal.App.4th 328, 331 (*Strong*)). Furthermore, the record reflects that the court properly considered the nature of the current offense. The court said the offense was one which the adolescent victim will “never forget” and which “changes” or “wrecks” “their whole life.”

There must be “extraordinary” circumstances for a career criminal to be deemed outside the spirit of the Three Strikes law, and Villasenor has not presented any here. (*Strong, supra*, 87 Cal.App.4th at p. 338.) Nor does he demonstrate the trial court was unaware of its discretion, considered

impermissible factors, or acted in an arbitrary, capricious, or patently absurd manner when it denied the *Romero* motion. Therefore, we do not disturb the court's decision. (*Carmony, supra*, 33 Cal.4th at p. 378.)

DISPOSITION

The judgment is affirmed.

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TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Jeffrey G. Bennett, Judge

Superior Court County of Ventura

Vanessa Place, under appointment by the Court of
Appeal, for Defendant and Appellant.

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