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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.

TYRONE MURPHY,

Defendant and Appellant.

2d Crim. No. B285970
(Super. Ct. No. SA088783)
(Los Angeles County)

Tyrone Murphy appeals after a jury convicted him of arson of another person's property (Pen. Code,¹ § 451, subd. (d)). In a bifurcated proceeding, the trial court found true allegations that appellant had prior strike and serious felony convictions (§§ 667, subds. (a)(1), (b) - (i), 1170.12, subds. (a) - (d)) and a prior conviction for arson (§ 451.1, subd. (a)(1)). The trial court sentenced him to 13 years in state prison, consisting of the midterm of two years doubled for the strike prior, plus five years for the prior serious felony conviction, plus four years for the

¹ All statutory references are to the Penal Code unless otherwise stated.

prior arson conviction. Appellant contends the court abused its discretion in denying his *Romero*² motion. In a supplemental brief, he contends he is entitled to a remand for the court to exercise its discretion whether to dismiss his prior serious felony enhancement allegation pursuant to amendments to section 667 that go into effect on January 1, 2019. The second contention has merit and we shall remand for resentencing accordingly. Otherwise, we affirm.

STATEMENT OF FACTS

At about 10:30 p.m. on September 10, 2014, a man wearing a dark hooded jacket walked onto the property of a BMW dealership, poured gasoline on several cars, and lit them on fire. Appellant's DNA was subsequently found on a gas can recovered from a nearby garbage container. His niece identified him as the individual depicted in a photograph obtained from surveillance video recorded earlier that night at a gas station near the crime scene. The photograph shows appellant carrying a gas can and buying gasoline. A dark hooded jacket was also recovered from appellant's apartment. A witness identified the jacket, which had burn marks and gasoline on it, as the one the perpetrator was wearing when he committed the crime.

DISCUSSION

Romero Motion

Appellant contends the court abused its discretion in declining to strike his prior strike conviction in the interests of justice pursuant to *Romero, supra*, 13 Cal.4th 497. We are not persuaded.

In deciding whether to grant a *Romero* motion, the trial court must “consider whether, in light of the nature and

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

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. Carmony* (2004) 33 Cal.4th 367, 377 (*Carmony*), quoting *People v. Williams* (1998) 17 Cal.4th 148, 161.)

We review rulings on a *Romero* motion for abuse of discretion. (*Carmony, supra*, 33 Cal.4th at p. 376.) “In reviewing for abuse of discretion, we are guided by two fundamental precepts. First, “[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.” [Citations.] Second, a “decision will not be reversed merely because reasonable people might disagree. . . .” [Citations.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.” (*Id.* at pp. 376-377.)

In denying appellant's *Romero* motion, the court found that appellant had numerous prior convictions of increasing seriousness and added that he “was . . . apparently living an honest life for about five years. But I can't ignore what he's done previously and what he's done now.” Regarding the current arson, the court noted that “people very easily could have been killed by burning or exploding cars” and that appellant had “carefully planned” the crime and “had done it before.” The court

also acknowledged that appellant suffers from mental illness and that inadequate treatment for that illness may have contributed to his crime. The court ultimately concluded, however, that this mitigating factor was insufficient to warrant striking the prior strike.

Appellant fails to meet his burden of showing that the court's denial of his *Romero* motion was an abuse of discretion. The record reflects that the court fully considered all relevant factors in finding that appellant did not fall outside the spirit of the three strikes law. Appellant refers to various factors including his age, his mental health issues, and the remoteness of his prior, yet he offers nothing to demonstrate that the court failed to consider these factors. (See *People v. Pearson* (2008) 165 Cal.App.4th 740, 749 [reviewing court presumes the trial court considered all relevant factors in denying a *Romero* motion].)

Moreover, there is nothing to indicate that the court misunderstood the scope of its discretion or considered impermissible factors in deciding whether to strike the prior. Accordingly, this case does not present the "limited circumstances" in which the denial of a *Romero* motion amounts to an abuse of discretion. (*People v. Leavel* (2012) 203 Cal.App.4th 823, 837.) In arguing otherwise, appellant essentially asks us to reweigh all of the factors presented at the sentencing hearing and reach a different conclusion than the one reached by the trial court. He also downplays the seriousness of his current arson offense and his lengthy history of recidivism. Based on the record before us, appellant has not shown that the trial court's denial of his *Romero* motion was "so irrational or arbitrary that no reasonable person could agree with it." (*Carmony, supra*, 33 Cal.4th at p. 377.)

Senate Bill 1393

After appellant was convicted on the arson count, the trial court found true the allegation that he had a prior serious felony conviction (a 1991 conviction for arson) as provided in section 667, subdivision (a)(1). Pursuant to that finding, a five-year enhancement was added to appellant's sentence. (§ 667, subd. (a)(1).)

On September 30, 2018, the Governor signed Senate Bill 1393, which amends Penal Code sections 667 and 1385 to provide the trial court with discretion to dismiss, in furtherance of justice, five year enhancements pursuant to section 667, subdivision (a)(1). The new law takes effect on January 1, 2019. Appellant and the People agree that the law will be applicable to defendants like appellant, whose judgments were not final as of the law's effective date.

DISPOSITION

The matter is remanded to the trial court with directions to exercise its discretion and resentence appellant after January 1, 2019, pursuant to sections 667, subdivision (a) and 1385, subdivision (b) as amended by Senate Bill 1393. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Mark E. Windham, Judge
Superior Court County of Los Angeles

Marta I. Stanton, 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, Scott A. Taryle, Supervising Deputy Attorney
General, and Michael Katz, Deputy Attorney General, for
Plaintiff and Respondent.