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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT TREVINO,

Defendant and Appellant.

B240423

(Los Angeles County
Super. Ct. No. NA090251)

APPEAL from a judgment of the Superior Court of Los Angeles County, Arthur Jean, Jr., Judge. Affirmed.

Jasmine Patel, 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, Michael R. Johnsen and Idan Ivri, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Robert Trevino appeals his convictions for sale of a controlled substance, cocaine base. The trial court sentenced Trevino to a prison term of 15 years 8 months. Trevino's sole contention on appeal is that the trial court abused its discretion by denying his request to strike a prior conviction allegation pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. Discerning no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts.*

In July 2011, Florita Blalock was working as an informant for the Los Angeles Police Department (L.A.P.D.), making undercover drug buys. On July 7, 2011, in one such operation, Blalock approached the Wilmington Inn in the City of Long Beach and told a man standing in front of the building that she wished to purchase \$40 worth of drugs. The man took her inside the motel and introduced her to Trevino. Trevino told Blalock to wait. Approximately 30 to 45 minutes later, Trevino returned and led Blalock into a room inside the motel. Once inside, he used a razor blade to cut pieces from a small white rock and gave them to Blalock in exchange for \$40.

On July 27, 2011, Blalock returned to the area to make another undercover buy. She asked a woman who was seated in a wheelchair in front of the Wilmington Inn for "Robert." The woman got up, knocked on the Inn's door, and indicated Blalock should enter. Blalock told another woman inside the motel that she wished to purchase \$80 worth of drugs. The second woman showed her into a motel room where Trevino was present. Trevino told Blalock to wait, and exited the room. An L.A.P.D. officer observed Trevino leave the motel, make a call from a telephone booth in a nearby parking lot, wait for a short period, exchange a cellular telephone with a woman, and enter a black Toyota that pulled up in the lot. After the Toyota drove around the parking lot, Trevino exited and returned to the motel where Blalock was waiting. He then cut pieces from a white rock, as he had done previously, and gave them to Blalock in exchange for \$80.

2. Procedure.

Trial was by jury. Trevino was convicted of two counts of the sale, transport, or offer to sell a controlled substance, cocaine base (Health & Saf. Code, § 11352, subd. (a)). In a bifurcated proceeding, the trial court found Trevino had suffered a prior “strike” conviction for burglary (Pen. Code, §§ 459, 667, subds. (b)-(i), 1170.12, subds. (a)-(d))¹ and had served four prior prison terms within the meaning of section 667.5, subdivision (b). The court denied Trevino’s *Romero* motion and sentenced him to a term of 15 years 8 months. It imposed a restitution fine, a suspended parole restitution fine, a court security fee, and a criminal conviction assessment. Trevino appeals.

DISCUSSION

The trial court did not abuse its discretion by denying Trevino’s Romero motion.

At sentencing, defense counsel made an oral *Romero* motion, asking that the court dismiss Trevino’s prior strike conviction, suffered in 1996 for burglary. Defense counsel argued that the strike prior was remote in time. Additionally, defense counsel urged that in the current offense Trevino was not actively “trying to bring in people” to buy drugs, but was instead “at a home location . . . where . . . people were coming to him to find drugs.” The trial court indicated it had reviewed Trevino’s file, including documentation regarding his activities in jail. It denied the motion, finding Trevino was a “career criminal, has been most of his life” and his prior convictions had not resulted in his rehabilitation.

Trevino contends the trial court abused its discretion by denying his *Romero* motion. We disagree. In the furtherance of justice, a trial court may strike or dismiss a prior conviction allegation. (§ 1385; *People v. Superior Court (Romero)*, *supra*, 13 Cal.4th at p. 504; *People v. Meloney* (2003) 30 Cal.4th 1145, 1155.) A trial court’s refusal to strike a prior conviction allegation is reviewed under the deferential abuse of discretion standard. (*People v. Carmony* (2004) 33 Cal.4th 367, 375.) Under that

¹ All further undesignated statutory references are to the Penal Code.

standard, the party seeking reversal must “ ‘clearly show that the sentencing decision was irrational or arbitrary. [Citation.]’ ” (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977.) It is not enough to show that reasonable people might disagree about whether to strike a prior conviction. (*Carmony*, at p. 378.) Only extraordinary circumstances justify a finding that a career criminal is outside the Three Strikes law. (*Ibid.*) Therefore, “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.” (*Ibid.*)

When considering whether to strike prior convictions, the relevant factors a court must consider are “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.) The Three Strikes law “not only establishes a sentencing norm, it carefully circumscribes the trial court’s power to depart from this norm [T]he law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper.” (*People v. Carmony*, *supra*, 33 Cal.4th at p. 378.) We presume the trial court considered all the relevant factors in the absence of an affirmative record to the contrary. (*People v. Myers* (1999) 69 Cal.App.4th 305, 310.)

The record before us reveals no basis for concluding that, as a matter of law, Trevino falls outside the spirit of the Three Strikes law. Trevino’s criminal history is lengthy, starting in 1994, when he was convicted of resisting an officer and placed on probation. In 1996, he was convicted of burglary and sentenced to two years in prison. In 2000, he was convicted of possession of controlled narcotic substances and sentenced to 28 months in prison. In 2003, he was convicted of battery, possession of narcotics paraphernalia, and using or being under the influence of a controlled substance, and placed on probation. In 2004, he was convicted of possession of a controlled narcotic substance and inflicting corporal injury on a spouse or cohabitant, and sentenced to two

years in prison. In 2006, he was convicted of possession or purchase of a controlled substance, and sentenced to five years in prison. Trevino was released from prison on November 14, 2010, approximately eight months before his arrest in the instant case. Thus, in addition to the instant offenses, his record includes five felonies and four misdemeanors. The probation report stated that Trevino had been given “the benefit of probation and parole; however, to no avail. The defendant is an unemployed, substance abusing and/or selling individual with lifelong questionable community ties.” His crimes did not result from a single period of aberrant behavior. (See *People v. Garcia* (1999) 20 Cal.4th 490, 503.) Trevino’s criminal history demonstrates he is “the kind of revolving-door career criminal for whom the Three Strikes law was devised.” (*People v. Gaston* (1999) 74 Cal.App.4th 310, 320; *People v. Pearson* (2008) 165 Cal.App.4th 740, 749.)

Trevino argues that his strike prior was remote in time, having been suffered in 1996, and his offenses, including the instant crime, were “minor” and nonviolent. However, the fact a prior is somewhat remote has little mitigating force “where, as here, the defendant has led a continuous life of crime” after suffering the prior conviction. (*People v. Pearson, supra*, 165 Cal.App.4th at p. 749; *People v. Humphrey* (1997) 58 Cal.App.4th 809, 813 [20-year-old felony conviction not remote given defendant’s criminal recidivism; a trial court cannot be expected to “simply consult the Gregorian calendar with blinders on”].) As the People point out, it appears the lapses in Trevino’s criminal history were due to the fact he was incarcerated for various periods.

Likewise, the fact a majority of a defendant’s offenses were nonviolent “cannot, in and of itself, take him outside the spirit of the Three Strikes law when the defendant is a career criminal with a long and continuous criminal history.” (*People v. Strong* (2001) 87 Cal.App.4th 328, 345.) Here, Trevino suffered convictions for battery and infliction of corporal injury upon a spouse or cohabitant, both of which involve violence. His strike prior was for burglary, an offense which carries a high risk of violence should the intruder and the property owner happen upon each other. “ “ “Burglary laws are based primarily upon a recognition of the dangers to personal safety created by the usual

burglary situation—the danger that the intruder will harm the occupants in attempting to perpetrate the intended crime or to escape and the danger that the occupants will in anger or panic react violently to the invasion, thereby inviting more violence.’ ” ’ ” (*Magness v. Superior Court* (2012) 54 Cal.4th 270, 275.) We disagree with Trevino’s characterization of his current crimes as “minor.” The evidence adduced at trial demonstrates that Trevino is a relatively sophisticated drug dealer. We do not view trafficking in drugs as an insignificant offense.

Trevino also argues that he falls outside the spirit of the Three Strikes law because his offenses are due to his “substance abuse problem.” However, “drug addiction is not necessarily regarded as a mitigating factor when a criminal defendant has a long-term problem and seems unwilling to pursue treatment.” (*People v. Martinez* (1999) 71 Cal.App.4th 1502, 1511.) Trevino’s drug-related offenses date back to 2000, demonstrating that he failed to conquer his substance abuse issues over the 12 years preceding the crimes. The trial court was therefore not obliged to view Trevino’s drug abuse as a mitigating factor.

Trevino characterizes the probation report as a “bare-bones” report which contained insufficient information concerning his prospects and failed to explain the basis for the author’s conclusion that he was unemployed and had questionable community ties. Trevino did not challenge the probation report below as insufficient, nor did he bring to the trial court’s attention any additional favorable information regarding his employment, community ties, or prospects. The probation report does set forth Trevino’s criminal history, which, as the probation officer opined, “speaks for itself.”

Finally, Trevino's attempt to distinguish his criminal history from the facts present in other cases is not persuasive. That other defendants' criminal histories may have been more egregious than Trevino's did not compel the trial court to grant his *Romero* motion. (See generally *People v. Carmony, supra*, 33 Cal.4th at p. 378.) "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, supra*, 69 Cal.App.4th at p. 310.) Such is the case here. No abuse of discretion is apparent.

DISPOSITION

The judgment is affirmed.

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ALDRICH, J.

We concur:

CROSKEY, Acting P. J.

KITCHING, J.