Filed 1/8/20 P. v. Bradley CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. WILLIAM BRADLEY, Defendant and Appellant.	B294286 (Los Angeles County Super. Ct. No. NA023859)

APPEAL from an order of the Los Angeles County Superior Court, William C. Ryan, Judge. Affirmed.

Nancy L. Tetreault, 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, Assistant Attorney General, Noah Hill and Nancy Lii Ladner, Deputy Attorneys General, for Plaintiff and Respondent.

Following a combined suitability hearing under the Three Strikes Reform Act of 2012, enacted by the voters as Proposition 36 (Pen. Code, § 1170.126)[1] and the Safe Neighborhoods and Schools Act, passed by the voters as Proposition 47 (§ 1170.18), the trial court found resentencing petitioner William Bradley would pose an unreasonable risk of danger to public safety. It therefore denied his petitions for recall of his prison sentence. On appeal, Bradley contends the trial court abused its discretion and violated his constitutional rights in denying his petitions. We disagree, and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Bradley's Commitment Offense and Sentence

In March 1996, a jury convicted Bradley of petty theft with a prior theft-related conviction (robbery) (§ 666). In a bifurcated proceeding, the trial court found true specially pleaded allegations that Bradley had suffered four prior serious or violent felony convictions (armed robbery) within the meaning of the three strikes law (§§ 667, subds. (b)-(i), 1170.12). The court sentenced Bradley as a third strike offender to an indeterminate prison term of 25 years to life. This court affirmed the judgment. (*People v. Bradley* (July 31, 1997, B101785) [1997 Cal.App. LEXIS 6419] [nonpub. opn.].)

B. Bradley's Petitions to Recall His Sentence

In November 2012, Bradley's counsel petitioned for recall of his sentence and resentencing under Proposition 36. In February

---

[1] Statutory references are to the Penal Code, unless otherwise indicated.

2015, counsel filed a similar petition under Proposition 47. After the trial court issued orders to show cause, the People opposed the petitions. The People conceded Bradley's eligibility, but argued Bradley was unsuitable for relief because resentencing him would pose an unreasonable risk of danger to public safety, including the risk that Bradley would commit a violent felony (also known as a "super strike").[2] Following continuances, supplementary petitions and other matters that prolonged the resolution of Bradley's petitions, the court held a two-day hearing in July and August 2018 to determine Bradley's suitability for relief.

1. *Criminal History*

At the suitability hearing, the People presented evidence of Bradley's criminal history, which (excluding any juvenile offenses) extended back to 1985, when he was convicted of forgery (§ 470). Between February 1987 and November 1988, Bradley suffered three convictions for resisting arrest (§ 148), three convictions for petty theft (§ 484), one conviction for driving under the influence of alcohol (Veh. Code, § 23152, subd. (b)) and one conviction for disorderly conduct (§ 647, subd. (i)). In April and May 1989, Bradley was again convicted of petty theft. In January 1990, he was convicted of battery (§ 242). Each of these offenses was committed while Bradley was on probation.

---

[2] Super strike or violent felony offenses include homicide offenses, solicitation to commit murder, assault with a machine gun on a peace officer or firefighter, possession of a weapon of mass destruction, sexually violent offenses, and "[a]ny serious and/or violent felony offense punishable in California by life imprisonment or death." (§ 667, subd. (e)(2)(C)(iv).)

Following a conviction for possession of a controlled substance (cocaine) (Health & Saf. Code, § 11350), Bradley's probation was revoked in February 1990, and he was sentenced to two years in state prison. He was paroled on September 5, 1990. After committing another petty theft, Bradley was found in violation of parole in December 1990 and sentenced to state prison to complete his term. Bradley was released on February 25, 1991. In April 1991, he was convicted of petty theft with a prior theft-related conviction.

On June 6, 1991, Bradley was convicted of committing four robberies in 1990 and 1991, all at the same motel. In the first robbery on November 15, 1990, Bradley entered the motel, threatened the desk clerk with a knife, and demanded money from the cash register. After receiving the cash, Bradley ordered the clerk outside and punched him in the stomach. On November 19, 1990, Bradley entered the motel and demanded money at knifepoint from the desk clerk. Rather than surrender the motel's cash, the clerk brandished an ax handle; Bradley fled. On March 20, 1991, Bradley and a confederate entered the motel. Bradley again demanded cash at knife point before he and his companion grabbed money from the cash register and fled. On March 24, 1991, Bradley, who was alone this time, demanded the desk clerk surrender cash at knife point and then fled. Bradley was found guilty of four counts of second degree robbery (§ 211) with special allegations he had personally used a knife (§ 12022, subd. (b)). He was sentenced to six years in prison.

On December 29, 1994, Bradley was released on parole. In March 1996, Bradley was convicted of the commitment offense after he entered a clothing store, removed a coat and a pair gloves, and left without paying for them. Bradley was sentenced

as a third strike offender to an aggregate state prison term of 25 years to life.

2. *Conduct While Incarcerated*

Bradley has been diagnosed with degenerative disc disease, a medically-recognized permanent disability. While incarcerated, he has used a cane, has worn a back brace, and is limited in his physical activities and job assignments.

As of November 2017, Bradley had incurred 97 prison rules violations of varying degrees of severity. These violations occurred both before and after filing the Proposition 36 and 47 petitions. In addition to numerous infractions, between 1996 and 2016 Bradley was repeatedly found to have falsified documents or records, possessed a controlled substance, refused to submit to a drug test, destroyed state property, disobeyed orders, engaged in disruptive behavior, and delayed or impeded a correctional officer or staff member. In 2008, Bradley was found to have illegally distributed methadone.

Bradley was also repeatedly disciplined for engaging in threatening and assaultive behavior. In 2002, Bradley threatened to stab a correctional officer in the yard. In 2003, he attempted to kick one correctional officer and to bite another. In 2003, Bradley struck a correctional officer with his cane. In another 2004 incident, he told a correctional officer that upon his release, "I'll have a gun to your fucking head." In 2010, Bradley raised his cane and advanced on a correctional officer after refusing to tuck in his shirt. In 2012, Bradley told a correctional officer that he would "have to assault and kill" his cellmate if Bradley was forced to return to his cell. Most recently, in

November 2017, Bradley advanced on a correctional officer and swung his cane at her head.

3. *Classification and Risk Assessment Scores*

The California Department of Corrections and Rehabilitation (CDCR) assigns every inmate a "classification score." The lower the score, the lower the perceived security risk. (*In re Jenkins* (2010) 50 Cal.4th 1167, 1171, see Cal. Code Regs. tit. 15, § 3375 et seq.) The lowest score a life inmate may have is 19. (Cal. Dept. Corrections & Rehabilitation, Department Operations Manual, ch. 6: Adult Classification, § 61010.11.5, pp. 515— 516 <http://www.cdcr.ca.gov/regulations/wp-content/uploads/sites/171/2019/07/Ch_6_2019_DOM.pdf?label=Chapter%206%Adult%20Classification&from=https://www.cdcr.ca.gov/regulations/adult-operations/dom-toc/>[as of Dec. 6, 2019], archived at <https://perma.cc/6EWV-6ZCA.) At the time of the suitability hearing, Bradley had a classification score of 540, up from 160 in 1996.

The CDCR uses the Static Risk Assessment (SRA), an actuarial tool that relies on demographic and criminal history data to predict the risk of recidivism for an inmate within three years after being released on parole. (Cal. Code Regs., tit. 15, § 3768.1.) The score range is: one (low); two (moderate); three (high; drug); four (high; property); and five (high; violence). (*Ibid.*) Bradley's SRA score was one (low) in 2016.

4. *Prison Programs and Plans for Release*

Bradley attended some Alcoholics Anonymous and Narcotics Anonymous meetings, enrolled in a 12-step program in April 2011, and completed the second and third quarters of self-help group meetings as of September 2016. From June to

September 2016, Bradley attended "Life Without a Crutch," an addiction recovery program.

Bradley had been accepted to residential reentry programs administered by Amity Foundation and Better Living Permanent Housing and Supportive Services upon his release.

5. *Expert Witness Evidence*

Bradley presented one expert at the suitability hearing, Dr. Rahn Minagawa, a clinical and forensic psychologist. Dr. Minagawa interviewed Bradley one time, on September 7, 2016. Dr. Minagawa also reviewed documentary evidence, including pertinent legal and correctional documents, and submitted a written report.

In his report, Dr. Minagawa stated Bradley started consuming alcohol at an early age and then became addicted to cocaine. Bradley used cocaine until he was arrested in 1991, but claimed he had stopped using the drug since he was last released on parole. However, Bradley continued to abuse alcohol until his arrest for the commitment offense. Bradley was currently prescribed methadone in prison to relieve his degenerative disc pain.

Bradley acknowledged to Dr. Minagawa that he had problems controlling his anger, which Bradley attributed to his back pain and unjust incarceration for petty theft. Dr. Minagawa emphasized Bradley had incurred 15 disciplinary violations during the last 10 years, which was a drop from the 67 violations he incurred during his first 10 years of incarceration. Bradley also acknowledged to Dr. Minagawa that he had not "take[n] seriously" the prison's various rehabilitative programs until learning he could possibly be resentenced under the new laws.

Recently, Bradley had completed an anger management program and had attended Alcoholics Anonymous and Narcotics Anonymous meetings.

Dr. Minagawa described several factors supporting his opinion that Bradley would not pose an unreasonable risk of danger to public safety if released: (1) Although Bradley was disciplined for twice refusing to submit to a drug test, he had since tested negative for drugs and appeared to be in sustained remission; (2) Bradley had been accepted into two residential reentry programs with strong substance abuse components; (3) Bradley understood his alcohol and cocaine addictions could trigger his criminal behavior; (4) Bradley's disciplinary violations had declined and were related to his resentment of the lengthy prison sentence relative to the commitment offense of petty theft; (5) Despite his anger, Bradley did not engage in violent acts while incarcerated; and (6) Bradley was over 50 years old, the age at which recidivist criminal or violent activity tends to markedly decline.

On cross-examination, Dr. Minagawa asserted Bradley's criminal record did not reflect any violent behavior. His four robberies involved wielding a knife or threatening to use a knife, rather than the actual use of a knife. Because the offenses occurred at the same motel on four different occasions, Dr. Minagawa considered them to be drug related. Dr. Minagawa characterized Bradley's rules violations as exhibiting primarily vocally aggressive or posturing behavior, as opposed to attempting to or actually using physical force against someone. Dr. Minagawa testified he was unaware of the 2016 and 2017 incidents in which Bradley had used his cane.

Dr. Minagawa acknowledged that while Bradley had abstained from using alcohol and cocaine while in the controlled environment of prison, if he were released into the community without any financial assistance or transitional housing, he would be more likely to relapse and commit crimes to support his addictions. However, Dr. Minagawa opined the risk Bradley would then commit a violent felony was extremely low.

C. The Trial Court's Ruling

On November 7, 2018, in a 19-page memorandum of decision, the trial court denied Bradley's petitions under Propositions 36 and 47. The court made findings on Bradley's criminal history, disciplinary and rehabilitation record while incarcerated and other relevant evidence, including Bradley's age, classification and SRA scores, postrelease plans and the opinions of the proffered expert. The court noted Bradley's lengthy criminal history, his history of committing crimes even while on probation and parole, his continuous rules violations and violent conduct as recently as 2017 while in prison, and his "extremely high" classification score of 540. The court observed Bradley's threatened stabbing of a correctional officer was consistent with his use of a knife during the four motel robberies. The court concluded Bradley's criminal history, viewed in conjunction with his prison disciplinary record, supported the finding that, if released, he posed an unreasonable risk of committing a super strike under Proposition 47.

The court determined the rules violations involving Bradley's threats to kill his cellmate, to place a gun to a correctional officer's head, and to stab a correctional officer in the yard, if acted upon, would have constituted super strikes.

However improbable the threats may have been, the court found they provided ample evidence Bradley continued to pose an unreasonable risk of committing a super strike.

The court found Bradley's rehabilitative efforts in prison to be insufficient. His unwillingness to participate in substance abuse and anger management programming provided little evidence that he would be able to successfully complete a reentry program. Considering the evidence in the record, the court found Dr. Minagawa's conclusions were not credible in light of his failure to consider misconduct occurring after 2012 and gave the expert's opinion "almost no weight."

The court concluded by noting that although Bradley's age and postrelease plans were slightly supportive of release, they were substantially outweighed by his criminal history, disciplinary record, rehabilitative record, and classification score. Based on these factors, the trial court found the totality of the record "demonstrates that . . . resentencing [Bradley] at this time would therefore pose an unreasonable risk of danger to public safety" under Propositions 36 and 47.

DISCUSSION

A. Standard of Review

We review the court's finding that a petitioner poses an unreasonable risk of danger to public safety under the abuse of discretion standard. (*People v. Losa* (2014) 232 Cal.App.4th 789, 791.) We review the facts and evidence upon which the trial court based its finding of unreasonable risk for substantial evidence. (*People v. Frierson* (2017) 5 Cal.5th 225, 239.) Where, as here, discretionary power is statutorily vested in the trial court (§ 1170.126, subd. (f); § 1170.18, subd. (b)), " 'its exercise of

that discretion "must not be disturbed on appeal except on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a miscarriage of justice." ' " (*People v. Hall* (2016) 247 Cal.App.4th 1255, 1264.)

B. Governing Law

Proposition 36 provides when the commitment offense is not a serious or violent felony and the petitioner is not otherwise statutorily disqualified from relief, the petitioner " 'shall be resentenced' as a second strike offender 'unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.' (§ 1170.126, subd. (f).)" (*People v. Valencia* (2017) 3 Cal.5th 347, 354.)

Proposition 47 reduces the punishment for certain theft- and drug-related offenses, by reclassifying them from felonies to misdemeanors. (*People v. Dehoyos* (2018) 4 Cal.5th 594, 597.) Convictions for petty theft with a prior theft-related conviction and possession of a controlled substance qualify for reclassification under Proposition 47. (§ 1170.18, subds. (a) & (b); *People v. Valencia, supra,* 3 Cal.5th at p. 355.) If a petitioner currently serving a sentence for a reclassifiable offense meets certain eligibility requirements, the petitioner must be resentenced to a misdemeanor unless the trial court concludes resentencing would pose an unreasonable risk of danger to public safety. Proposition 47 further defines an unreasonable risk of danger to public safety as "an unreasonable risk that the petitioner will commit a new violent felony." (§ 1170.18, subds. (b) & (c).)

Propositions 36 and 47 require the same two-step procedure: First, the trial court must determine if a petitioner is statutorily eligible for resentencing. The court found Bradley statutorily eligible, a finding the People do not dispute. Second, if the petitioner is eligible, the court must determine whether the petitioner represents a danger to public safety under the applicable standard if released. (§ 1170.126, subd. (f); (§ 1170.18, subds. (b) & (c).)

In deciding whether a petitioner poses a danger to public safety or the risk of committing a future super strike, the court "may consider" the petitioner's criminal conviction history, disciplinary record, record of rehabilitation and "any other evidence" the court deems relevant. (§1170.126, subd. (g)(1)—(3); § 1170.18, subd. (b)(1)-(3).) The People have the burden of showing dangerousness by a preponderance of the evidence. (*People v. Frierson*, *supra*, 4 Cal.5th at p. 239.)

C. The Trial Court Did Not Abuse Its Discretion In Denying Bradley's Proposition 36 and 47 Petitions

In considering both petitions, the trial court concluded Bradley was unsuitable for resentencing because of his potential future dangerousness. In assessing Bradley's suitability, the trial court applied the statutorily enumerated factors and made findings as to each one. The court relied on the fact Bradley had used a dangerous weapon when committing prior felonies and had refused to obey the law even when he was on parole or probation. The court considered Bradley's age and that his crimes were remote in time, but also his history of reoffending, his numerous rule violations and violent conduct while incarcerated, and meager participation in rehabilitative

programs. The court ultimately concluded the totality of the evidence indicated Bradley currently posed an unreasonable risk of danger to public safety.

Bradley contends the trial court abused its discretion because it was impermissibly speculative to base a dangerousness finding on his 1991 armed robbery convictions and persistent but arguably declining belligerence while in prison. In Bradley's view, a man in his fifties, who wielded a knife on four occasions nearly 30 years ago to obtain some cash to satisfy his alcohol and drug addictions, is unlikely to commit a super strike upon release. We, however, do not reweigh the evidence. Tested under the abuse of discretion standard, Bradley's argument is not persuasive in light of the substantial evidence he frequently exhibited uncontrolled anger and repeatedly used his cane to threaten or cause harm to prison staff. The court was not unreasonable in concluding that someone who carried a cane out of necessity, but, when enraged, readily employed it as a weapon in prison, may well resort to violence if experiencing stress outside of prison.

Bradley further contends the court erred in rejecting Dr. Minagawa's opinion that Bradley did not pose an unreasonable risk, to the extent his prior crimes were drug related and his alcohol and drug addictions were in sustained remission. Bradley also argues the court's finding Bradley needed more rehabilitative programming was speculative. But the trial court, as the trier of fact, was free to disregard the expert opinion in light of other evidence presented. (*People v. Brown* (2014) 59 Cal.4th 86, 101.) Moreover, Bradley fails to acknowledge other testimony by Dr. Minagawa supported the court's decision. Dr. Minagawa made clear that while he thought Bradley should be

released, Bradley would need assistance to ensure he would not relapse and commit crimes to support his addictions. This testimony supports the court's finding Bradley had not yet reached a point of recovery that would eliminate an unreasonable risk of danger to public safety.

D. Bradley Received Due Process

Relying on *Greenholtz v. Inmates of Nebraska Penal & Correctional Complex* (1979) 442 U.S. 1 [99 S.Ct. 2100, 60 L.Ed.2d 668] (*Greenholtz*), *Board of Pardons v. Allen* (1987) 482 US. 369 [107 S.Ct. 2415, 96 L.Ed.2d 303] (*Allen*), and *People v. Ramirez* (1979) 25 Cal.3d 260 (*Ramirez*), Bradley contends he has a liberty interest in resentencing under Propositions 36 and 47 protected under the federal guarantee of due process (U.S. Const., 5th & 14th Amends.) and the comparable but broader state due process guarantee (Cal. Const., art. 1, § 7, subd. (a)(15.) To safeguard that due process liberty interest, Bradley urges that where a petition for resentencing is denied, there must be a rational nexus between the inmate's record and the court's conclusion of dangerousness based on a balancing of all of the factors in the petitioner's record. The People, on the other hand, argue *Greenholtz*, *Allen*, and *Ramirez* address inapposite proceedings (parole hearings, and finding a defendant unsuitable for treatment such that he instead was to serve time in prison) that have no connection to petitions for postconviction relief and resentencing, and establish no such due process liberty interest.

We need not resolve this dispute because even if the claimed due process liberty interest exists under Propositions 36 and 47, the trial court respected it. Federal due process requires notice, an opportunity to be heard, and if the petition is denied a

statement of reasons for the denial. (E.g., *Greenholtz*, 442 U.S. at p. 16.) Our Supreme Court in *Ramirez* further held a state due process liberty interest includes "freedom from arbitrary adjudicative procedures," meaning "fair and unprejudiced decision-making" and "being treating with respect and dignity." (*Ramirez*, *supra*, 25 Cal.3d at p. 268).

Bradley received notice of the hearing, an opportunity to be heard, was treated respectfully and fairly, and the trial court gave a lengthy written statement of the reasons for its denial of the petitions that demonstrated unprejudiced decision-making. Furthermore, as explained above, there was a rational nexus between the facts adduced at the hearing and the court's conclusion of dangerousness. Thus, assuming without deciding that Bradley has the due process liberty interest he claims, there was no constitutional violation in the denial of his petitions.

E. The Trial Court Did Not Impermissibly Shift the Burden of Proof or Violate Bradley's Fifth Amendment Right Against Self-Incrimination

At the suitability hearing, Bradley claimed his numerous rules violations resulted from a need to defend himself against continuous, unprovoked, and racially motivated physical attacks by correctional officers. Bradley also maintained he was injured in these attacks, such as during the 2003 incident in which he attempted to kick one correctional officer and to bite another. Bradley presented evidence that he was subsequently hospitalized, suffering from a brain hemorrhage and a lacerated ear canal.

In connection with these claims, Bradley asserted his due process rights were violated during an internal hearing on the most recent rules violation. After the hearing officer found

Bradley had swung his cane at the head of a correctional officer in 2017, Bradley pursued an administrative appeal, contending he was prevented from questioning witnesses to prove he never committed the assault. Bradley maintained he was set up by correctional officers to be attacked by four inmates. Bradley's appeal was partially granted to allow him to question witnesses who had previously been excluded from the internal hearing.

In its ruling, the trial court stated, "Petitioner argues generally that the events as relayed in the [rules violations reports] are incomplete and do not show instances where Petitioner was injured by prison staff. [Citation.] Petitioner offered a copy of his inmate appeal contesting his most recent [rules violation], for assault on a peace officer in 2017, into evidence. [Citation.] Although the appeal was granted in part, to allow Petitioner to question additional witnesses, there is no evidence in the record to show that the finding of guilt was overturned. [Citations.] Additionally, there is no evidence in the record that appeals were granted regarding any of the other [rules violations] discussed *post* and *ante*. Petitioner also introduced into evidence reports from the Office of the Inspector General and a human rights group detailing misconduct at prisons at which Petitioner was incarcerated. [Citations.] While neither report identified inmates by name, it appears that neither report discussed any incident involving Petitioner. *The court also notes that Petitioner did not take the stand and testify*, and that Proposition 47 instructs the court to consider the disciplinary record. [Citation.] Therefore, the court relies on the events as relayed in the official [rules violations reports] received into evidence." (Italics added.)

Bradley makes much of the italicized statement in the trial court's ruling. According to Bradley, by noting his failure to testify, the court impermissibly shifted the burden to Bradley to prove his suitability for resentencing, rather than requiring the People to prove dangerousness. Bradley further contends the statement was an infringement of his Fifth Amendment right against self-incrimination.

We do not view the trial court's statement as misplacing the burden of proof or implicating Bradley's Fifth Amendment right against self-incrimination. The full context of the court's statements makes clear that the court was explaining its credibility determinations concerning Bradley's conduct while incarcerated. The court gave reasons for finding the conclusions of the rules violations reports credible, and for rejecting Bradley's version of events put forward in those reports (which the rules violations reports also rejected). One of those reasons was the lack of any further evidence from Bradley beyond statements which the reports had already rejected. That was permissible. (See *People v. Bradford* (1997) 15 Cal.4th 1229, 1340 ["A distinction clearly exists between the permissible comment that a defendant has not produced any evidence, and on the other hand an improper statement that a defendant has a duty or burden to produce evidence . . . ."].) As the court stated in its ruling, the People had the burden to prove an eligible petitioner would pose an unreasonable risk of danger to public safety if resentenced. The record shows the court understood and properly applied the correct burden of proof.

DISPOSITION

The order denying the Proposition 36 and 47 petitions is affirmed.

NOT TO BE PUBLISHED

WEINGART, J.*

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.

---

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.