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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL ANTONIO LUERAS,

Defendant and Appellant.

A172397

(Napa County
Super. Ct. No. 24CR000812)

Daniel Antonio Lueras appeals from a judgment sentencing him to 32 months in state prison after he pled no contest with a “32 month lid” to felony false imprisonment by violence (Pen. Code,¹ § 236) and misdemeanor domestic battery (§ 243, subd. (e)(1)). Lueras contends the court (1) abused its discretion in declining to strike his prior strike convictions² because it failed to consider “all factors relevant” to the *Romero* analysis, and (2) it erred in failing to award conduct credits pursuant to section 4019. We affirm the judgment and sentence, but in view of the conceded error as to conduct credits, we remand with instructions for the trial court to calculate the

¹ Further undesignated statutory references are to the Penal Code.

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

conduct credits consistent with this opinion and, correspondingly, correct the abstract of judgment.

BACKGROUND³

Lueras and Jane Doe share three children, who were ages 6, 4, and 1 at the time of sentencing; Doe also has one teenage son from a prior relationship. At the time of the underlying incidents, Lueras and Doe had been married for approximately six years; they were in the process of separating but Doe let Lueras come by periodically to visit their children.⁴

On November 27, 2023, police officers were dispatched to a report of domestic violence at Doe's apartment. Doe told the officers that Lueras had left a sticky note in her apartment while she was out; he later threw rocks at her window, waited to enter the locked doors of the apartment complex, and then, after gaining entry, knocked on Doe's apartment door. Doe opened the door but began filming the interaction because Lueras was "becoming violent"; he accused her of infidelity, lunged at her, grabbed her phone, and pinned her to the kitchen countertop. Lueras threw Doe to the ground, but Doe hit him with a vacuum to get her phone back and call for help, after

³ Consistent with the appellate briefing, the facts are drawn from the parties' sentencing briefs and statements on the record, the "Arrestment Court Report," the Napa County Police Department "arrest/detention/complaint form[s]" for the November 2023 and the March 2024 incidents, and the Napa County probation officer's report and recommendation prepared in advance of sentencing and dated December 12, 2024. No police reports or accompanying statements are included in the appellate record.

⁴ Doe filed for divorce during the pendency of the criminal proceedings. However, in his statement given to the probation officer prior to sentencing, Lueras reported that he and Doe "were still living together and working on their relationship."

which, Lueras left the apartment complex. Doe sustained a small cut to her finger.

On March 12, 2024, police officers were again dispatched to Doe's apartment complex to respond to a report of domestic violence. Doe stated that she and Lueras had argued over finances and infidelity, and she told him to leave. Lueras had "forcibly strangled her with both hands for several seconds." He then pulled Doe by the neck into her bedroom, pushed her on the bed, and laid "on top of her in a mount position, restricting her from moving and escaping his grasp." Lueras strangled Doe again for approximately 30 seconds, during which time, Doe did not lose consciousness but was unable to breathe. Doe's 13-year-old son opened the door to the bedroom, and Lueras released Doe for a moment to shut the door. Doe's son again opened the door, and Doe told him to call 911. When Doe's son attempted to call, Lueras grabbed the phone to prevent him from calling. Doe fled the room and called 911. Lueras told Doe that he would tell officers that she had previously stabbed him. Lueras fled the apartment complex in his vehicle but was detained soon after.⁵

After being read his *Miranda* rights,⁶ Lueras agreed to speak with the police officers and told them that during his verbal argument with Doe, he had "attempted to separate from her, but she continued to follow him and be confrontational." Lueras denied physically assaulting Doe and stated that if her son had told them he hit Doe, it was because Doe had " 'trained' her son to say that." Lueras also represented there had been "several" incidents of

⁵ During a follow-up interview on August 1, 2024, Doe told officers that she had " 'exaggerated' the incident and wanted to get [Lueras] in trouble at the time"; she recanted her statement that Lueras strangled her.

⁶ *Miranda v. Arizona* (1966) 384 U.S. 436.

domestic violence where he was the victim. He said that Doe had previously used a knife to “ ‘stab’ ” him and puncture his upper back after accusing him of infidelity. Officers confirmed Lueras had a quarter-inch scar on his upper back.⁷ Lueras also detailed another incident where he and Doe got into an argument over a cell phone and Doe “accidentally” hit him, giving him a black eye.

Officers arrested Lueras, who was released on bail that same day, March 12, 2024.⁸ He was later charged by amended complaint with two felonies: assault by means to produce great bodily injury (§ 245, subd. (a)(4); count 1) and false imprisonment by violence (§ 236; count 2). The complaint further alleged seven special allegations relating to the felony counts: two prior strikes (§ 1170.12, subds. (a)–(d); counts 1–2); violence, cruelty, viciousness or callousness (Cal. Rules of Court,⁹ rule 4.421(a)(1); counts 1–2); vulnerable victim (rule 4.421(a)(3); counts 1–2); position of trust (rule 4.421(a)(11); counts 1–2); increasing seriousness of priors/sustained petitions (rule 4.421(b)(2); counts 1–2); violent conduct (rule 4.421(b)(1); counts 1–2); and prior prison term (rule 4.421(b)(3); counts 1–2). Lueras was also charged

⁷ Doe later explained to police officers that she had accidentally stabbed Lueras in a previous altercation. Doe had been cutting fruit when Lueras slapped the knife from her hand. Lueras started walking toward the location of additional knives, so Doe held the knife she previously dropped in front of her, thinking Lueras was going to stab her; Lueras “took several steps backwards and one of his shoulder blades moved into the tip of the knife.”

⁸ After the initial complaint was filed on April 22, 2024, an arrest warrant issued. On May 1, 2024, Lueras was again arrested; he was released on bail the following day. Lueras remained out of custody until he was sentenced and remanded on December 12, 2024.

⁹ Further rule references are to the California Rules of Court.

with two misdemeanors: interference with a wireless communication device (§ 591.5; count 3) and domestic battery (§ 243, subd. (e)(1); count 4).

On August 14, 2024, Lueras pled no contest to felony false imprisonment by violence and misdemeanor domestic battery (counts 2 & 4) and admitted his prior strike convictions from 2014 (actively participating in a criminal street gang; § 186.22, subd. (a)), and 2017 (assault with a firearm, § 245, subd. (a)(2), with a gang enhancement specially alleged, § 186.22, subd. (b)(1)), as well as six factors in aggravation under rule 4.421(a)(1), (3), (11) & (b)(1), (2), (3). The trial court found that Lueras made a knowing, intelligent, voluntary waiver of his rights and adopted the findings of the plea form as the order of the court, noting there was a “32 month lid offer.” The trial court dismissed the remaining counts and special allegations, took *Harvey* and *Cruz* waivers,¹⁰ and referred the matter to the probation department for preparation of a presentencing report.¹¹

Prior to the sentencing hearing, Lueras filed a “Sentencing Memorandum and *Romero* Motion” in which he requested a sentence of two years’ probation, or in the alternative, the low term of 16 months in state prison and that his strike priors be stricken. In support of the *Romero* motion, Lueras cited his renunciation of his gang affiliation, his participation

¹⁰ *People v. Harvey* (1979) 25 Cal.3d 754, 758 [facts underlying charges dismissed as part of a negotiated plea may not, absent contrary agreement by the defendant, be considered adversely in sentencing]. *People v. Cruz* (1988) 44 Cal.3d 1247, 1254, fn. 5 [the plea would remain open if Lueras failed to appear for sentencing, probation, or if he committed a new law violation].

¹¹ The plea form also included a handwritten note that read, “waive appeal,” however, neither counsel mentioned a waiver of appellate rights at the time of the plea, and the court did not conduct a related voir dire. In the respondent’s brief, the Attorney General does not argue Lueras has waived his right to appeal, thus we do not discuss the matter further.

in fire camp while in prison, being discharged from parole in July 2022 without any violations, and his steady employment in restaurants. As to the prior serious felony strikes, Lueras explained that his 2014 conviction for participating in a criminal street gang (§ 186.22, subd. (a)), for which he was placed on probation, resulted from his attempt to bring marijuana into jail as he “was directed by other inmates” when he self-surrendered to serve custodial time for violating his pre-existing probation. Lueras stated that in 2017, he was convicted of assault with a firearm (§ 245, subd. (a)(2)) with a gang enhancement (§ 186.22, subd. (b)(1)) for his involvement in a shooting. Lueras included character reference letters in support of his claim that granting the *Romero* motion would be in the interests of justice. Lueras further requested consideration of sentencing factors in mitigation under rule 4.423 (rule 4.423(b)(8), (9), (13), (15)).

The People filed a sentencing brief and opposition to the *Romero* motion, requesting the court sentence Lueras to 32 months in state prison, citing the factors of aggravation under rule 4.421 to which Lueras admitted in his plea and representing that his prior performance on probation or parole was unsatisfactory (rule 4.421(b)(5)). The People argued that striking the prior strikes would not be in the “furtherance of justice” in light of the nature and circumstances of the presently charged felony, his former gang activity, his 2014 domestic violence conviction involving a different victim, his two prior serious felony strike convictions, and his lengthy criminal history including eight felony juvenile adjudications, three misdemeanor convictions, and five felony convictions. The People described the two current incidents as “dangerous and escalating” and noted that “[e]ven after a decade prison sentence, [Lueras] made it a very short amount of time after completing parole before continuing his criminal activity.” Specifically, the

People represented that Lueras committed the November 2023 incident only a year and a half after completing his parole for the 2017 strike. As to the prior serious felony strikes, the People clarified that Lueras’s 2017 conviction was for his involvement in a gang-related shooting that was originally charged as two counts of attempted murder plus other firearm related offenses; he was sentenced to 10 years 4 months in state prison. Should the court grant the *Romero* motion, the People argued in the alternative that the midterm sentence would be appropriate.

The probation department’s sentencing report summarized Lueras’s criminal history and determined his “performance on probation is considered poor.”¹² Lueras was assessed to have a “high risk to reoffend” for both crimes in general and domestic violence specifically. The report included a statement from Doe in which she told the department that even after the issuance of the no contact order in November 2024, Lueras “continues to drive passed [*sic*] her house and honks his horn at her.”¹³ The probation department recommended that probation be denied and Lueras be committed to state prison.

¹² The probation report noted Lueras’s “documented history of Norteno criminal street gang activity, but stated he is no longer active in a gang.”

¹³ In earlier court proceedings, Doe had represented that she did not want to pursue charges against Lueras and did not feel threatened by him. Thus, on May 2, 2024, the court modified the “no-contact” restraining order initially issued to permit peaceful contact with Doe and her teenage son. However, after Lueras’s no contest plea but before sentencing, Doe sought a “no-contact/full stay-away” order because Lueras had been showing up at her home uninvited, often in the middle of the night, and messaging and calling her despite Doe asking “him numerous times to stop.” On October 27, 2024, Doe filed a police report, “alleging annoyance and unwanted interaction by [Lueras] at her home.” The court granted Doe’s request to again modify the restraining order to this time prohibit any contact; this stay-away order was served on Lueras on November 4, 2024.

The day before sentencing, Lueras submitted supplemental video and text messages that included “threats from the victim to [Lueras],” that he asserted were mitigating factors for sentencing because the “domestic violence has been mutual.” The text messages from Doe included derogatory language and profanity. In one, Doe stated: “Don’t show up in my house [o]r it’s gonna be bad for you.”¹⁴

At the December 12, 2024, sentencing hearing, Lueras asked the court to strike his strikes in the interest of justice and requested probation, emphasizing, “there is no visible injury to the victim. She did not seek medical attention,” and that Lueras was previously released from parole so quickly his parole officer told him it was “almost unheard of.”¹⁵ Lueras made an oral statement to the court in which he stated he “took advantage of the rehabilitation part” of his prior prison commitment and has been “doing good.” He signed the *Cruz* waiver because he does not worry about breaking the law, “not anymore,” because he is trying to “go forward.”

The People read aloud a statement written by Doe, in which she explained her relationship with Lueras, whom she started dating in 2017 and

¹⁴ At the sentencing hearing the following day, the People argued that the video and text messages were not relevant to the *Romero* motion because they post-dated the incidents underlying the convictions and Lueras’s pleas of no contest meant the facts were not in dispute. Lueras’s counsel countered that Doe’s subsequent conduct was important to consider as mitigating evidence for the *Romero* motion because it “could provide some background and context as to the type of relationship this was at the time that the incident took place.” The court admitted the video and text messages into evidence over the People’s objection and stated the court would “give it whatever weight I deem appropriate,” however the video was not included in the record on appeal.

¹⁵ Lueras represented his parole was terminated after 11 months. The probation report reflects that Lueras was paroled on July 25, 2021, and “[s]uccessfully completed parole” on July 25, 2022.

married while he was in prison because she believes “people deserve a second chance.” Doe stated she “tried to be the support [she] thought that he needed to stay out of trouble” but “lost [herself] in the process.” After Lueras returned from prison, he “was doing well for a while,” but “[a]s time went on, [Lueras’s] manipulation became worse and worse. Money, lies and affairs became a source of arguments, many of which turned violent.” When Doe was pregnant with their third child, Lueras “left Doe at the side of the road . . . while [she was] experiencing health problems.” Because of Lueras’s abuse, Doe had a hard time bonding with and caring for her young children, including an infant with a heart condition. Doe represented that Lueras’s behavior caused her estrangement from her family and, as “a result of [Lueras’s] abuse, [Doe] experienced and [has] been diagnosed with PTSD, postpartum depression and anxiety,” for which she takes medication. Doe stated, “I trust that [Lueras] will be sentenced according to law, and what the judge thinks is just.” She asked that his sentence “include[] drug and alcohol treatment, as well as parenting classes, so he learns and understands what it means to be a father. Despite everything that [he] has done to me, I still wish him well and I hope he will better himself over time for the benefit of his children.”

After reading Doe’s statement, the People argued against the *Romero* motion, repeating much of their sentencing memorandum and requesting a low term sentence of 16 months be doubled for 32 months. The People contended that the case involved two separate escalating incidents of domestic violence the most recent of which was “concerning due to strangulation” and was “[o]nviewed by the teenage child.” The People emphasized that Lueras “really has not stayed crime free in any meaningful way, and he has escalated his conduct”

Prior to sentencing Lueras, the court summarized the materials that it had reviewed and stated it had “no doubts” that “there has been mutual domestic violence between these two individuals.” The court noted, however, that it was Lueras who had pled to a section “236 felony and has a horrendous record”; sentencing is limited “to the conduct as I know it, and understanding that perhaps [Doe] at times can also be violent.” The court concluded, “Given his record, and given the information that I have before me, I am not in a position to strike the strikes. Certainly not even a close case where the court would be granting probation.” The court sentenced Lueras to the low term of 16 months in state prison on count 2, doubled for a total of 32 months. As to count 4, the court denied probation and gave Lueras credit for the three days he had already served in custody. The court adopted the additional conditions of the plea, ordered fines and fees, advised Lueras of his appellate rights, and remanded him to custody. The court also executed a new no-contact and stay-away order protecting Doe and her son.

Lueras timely appeals.

DISCUSSION

First, Lueras contends that the trial court abused its discretion in declining to strike his strike priors because it failed to consider “all the factors relevant to the analysis of the *Romero* motion.” Specifically, he contends the court failed to consider the “extensive mitigating information,” and thus, “did not engage in any analysis” of whether he may be deemed outside the Three Strikes scheme’s spirit. We disagree.

Second, Lueras argues and the Attorney General concedes that the court erred in failing to award Lueras his conduct credits. We agree and direct correction of the abstract of judgment.

I. *Romero* Motion

We review the trial court's decision not to strike a prior serious felony strike under "the deferential abuse of discretion standard." (*People v. Carmony* (2004) 33 Cal.4th 367, 371 (*Carmony*)). Because there is a strong presumption that a sentence conforming to the Three Strikes law is "both rational and proper," a trial court will generally only be found to have abused its discretion in "limited circumstances" such as where the court was unaware of its discretion to dismiss a strike or considered impermissible factors in declining to dismiss. (*Carmony*, at p. 378.)

The Three Strikes law was "intended to restrict courts' discretion in sentencing repeat offenders." (*Romero, supra*, 13 Cal.4th at p. 528.) To this end, it " 'does not offer a discretionary sentencing choice, as do other sentencing laws, but establishes a sentencing requirement to be applied in every case where the defendant has at least one qualifying strike, unless the sentencing court "conclud[es] that an exception to the scheme should be made because, for articulable reasons which can withstand scrutiny for abuse, this defendant should be treated as though he actually fell outside the Three Strikes scheme.' " " (*Carmony, supra*, 33 Cal.4th at p. 377.)

In determining whether a prior strike conviction should be dismissed, " 'the court in question 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.' " (*Carmony, supra*, 33 Cal.4th at p. 377; see also *People v. Banks* (1997) 59 Cal.App.4th 20, 23–24

[describing criteria the court should consider in a *Romero* motion analysis].) But the circumstances under which a defendant can be deemed to fall outside the spirit of the Three Strikes law must be “extraordinary.” (*Carmony*, at p. 378.) And in considering these circumstances, “ ‘ ‘ ‘An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.’ ” ’ ” (*Id.* at p. 377.)

“[A]lthough a trial court is required to state on the record its reasons for striking a prior conviction (§ 1385, subd. (a)), there is no similar statutory requirement of an on-the-record statement of reasons when a court declines to strike a prior.” (*In re Coley* (2012) 55 Cal.4th 524, 560.) In “the absence of an affirmative record to the contrary,” we presume the trial court considered the relevant factors in ruling on a *Romero* motion. (*People v. Myers* (1999) 69 Cal.App.4th 305, 310.)

Lueras contends that “the trial court’s ruling reflects a failure to meaningfully engage with the extensive mitigating information.” He complains the court’s statement, “Given his record, and given the information that I have before me, I am not in a position to strike the strikes,” contravenes *Romero* and *Banks*, “which require more than an assessment of the defendant’s criminal history in deciding whether to grant *Romero* relief.” Lueras argues his good performance on probation and parole, his participation in programming in prison—including voluntarily renouncing his gang affiliation so he could participate in fire camp—community support from family, employment as a chef at a restaurant, and expressions of remorse all favor Lueras being “ ‘deemed outside the [Three Strikes] scheme’s spirit, in whole or in part.’ ” (*People v. Williams* (1998) 17 Cal.4th 148, 161.) Lueras repeats his argument at sentencing that the “mutual combat” between himself and Doe could “place [his] crime in a

broader context” that “mitigated the seriousness of the crime of conviction” and should have been considered by the court. He contends that the court abused its discretion in “failing to consider” Doe’s statement read at the sentencing hearing, which he claims supports a grant of probation. We are not persuaded.¹⁶

Contrary to Lueras’s claim that the court failed to “meaningfully engage” in the *Romero* analysis required, the trial court explicitly stated that it “had an opportunity at this point to review all of the information that I was asked to review. I have a presentence report, I have a *Romero* Motion, I have letters that were written on behalf of [Lueras], I have the People’s opposition, and then I was sent something yesterday via email regarding a cellphone video.” The court admitted into evidence the video submitted by defense counsel over the People’s objection, which, according to the court, showed Doe “hitting [Lueras] on the head, using profanity” and “really out of control.” The court stated it had “no doubts” that “there has been mutual domestic violence between these two individuals” but noted that it was Lueras who had pled to a section “236 felony and has a horrendous record. I don’t know much about the victim’s prior convictions, if any, but he’s the one who is

¹⁶ Lueras concedes, as the Attorney General argues, that his trial counsel failed to object to the trial court’s “failure to fully consider the *Romero* motion,” but contends the issue is not forfeited because the trial court’s error is not just a discretionary error, it is an error of law that substantially affects his right to due process. (Citing *In re Sheena K.* (2007) 40 Cal.4th 875, 887, fn. 7.) In the alternative, Lueras asserts his trial counsel was ineffective because the failure to object was not a tactical decision and it prejudiced him. (Citing *In re Jones* (1996) 13 Cal.4th 552, 571–573.) We exercise our right to decide the appeal on its merits and therefore need not address the arguments of forfeiture or ineffective assistance of counsel. (*People v. McCullough* (2013) 56 Cal.4th 589, 593 [“neither forfeiture nor application of the forfeiture rule is automatic,” and appellate courts have discretion to review otherwise forfeited challenges].)

pleading to a domestic violence charge.” Such analysis is not an abuse of discretion, particularly in light of the details surrounding Lueras’s record and the circumstances of this case. (*People v. Williams, supra*, 17 Cal.4th at p. 161 [the trial court “must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions” the defendant is outside the scheme’s spirit].)

Lueras appears to acknowledge the court’s consideration of his “volatile” relationship with Doe but attempts to use Doe’s alleged acts of prior aggression to minimize the seriousness of his own actions. This effort fails, because, as the trial court stated, “I am simply limiting myself to the conduct as I know it [¶] [W]e are not litigating a self-defense situation.” And, as the record shows, the March 2024 incident evinces an escalation of violence from the November 2023 incident: Lueras strangled Doe two separate times for as long as 30 seconds, rendering her unable to breathe. When Doe’s teenage son tried to help his mother, Lueras forced him out of the room and “grabbed” his phone, so that he could not call 911 for assistance. These factors arising out of the pled offenses support the court’s determination that Lueras was not “outside the spirit” of the Three Strikes law. (See *People v. Williams, supra*, 17 Cal.4th at p. 163.)

It is in this context that we look to Lueras’s criminal history, including the nature of the two prior strike convictions that he admitted as part of the plea agreement. As previously stated, the first is a 2014 felony conviction for participating in a criminal street gang (§ 186.22, subd. (a)), when Lueras, who was self-surrendering after having already violated his probation, attempted to bring marijuana into jail. His ensuing no contest plea resulted in a sentence of an additional five years’ probation. The second is a 2017 felony conviction for assault with a firearm (§ 245, subd. (a)(2)) with a gang

enhancement (§ 186.22, subd. (b)(1)), arising out of a gang-related shooting for which Lueras was originally charged with two counts of attempted murder and other firearm related offenses. After pleading no contest, Lueras was sentenced to 10 years 4 months in state prison. Upon his release, Lueras was placed on parole, which was terminated after approximately one year. But only a year and a half after his parole terminated in 2022, Lueras committed the November 2023 incident, and four months later, he was arrested after repeatedly strangling his wife.

Further, the record belies Lueras's complaint that the court failed to consider Doe's statement submitted at sentencing. First, the court's direction that the statement be read in open court, rather than reviewed separately, shows the court heard Doe's words. Second, nowhere in her statement does Doe request a sentence of probation, the striking of Lueras's strikes, or more lenient treatment. To the contrary, Doe's statement details years of abuse and manipulation that caused estrangement from her family, impaired her ability to bond with her young children, and endangered both her mental and physical health, resulting in a need for ongoing medication. Doe specifically wrote, "I trust that [Lueras] will be sentenced according to law and what the judge thinks is just" and asked that his sentence include drug and alcohol treatment and parenting classes, forms of counseling that Doe presumably knows from Lueras's prior prison and parole experience are available both in and out of custody. Further showing its consideration of Doe's wishes, after the reading of her statement, the court asked, "Did we speak to the victim about . . . what the offer would be, did we speak to her about her wishes regarding an opportunity on probation or sentencing him to prison?" The People responded, "I don't think that was specifically discussed with her. She was very aware of the offer. And as the court notes from the history of the

case, it was a little bit back and forward in terms of her wishes. I think it's a very . . . volatile relationship where she appears to be very torn, would be my belief."

It was after this exchange and the arguments of counsel that the court concluded it "was not in a position to strike the strikes," and it was "not even a close case where the court would be granting probation." Although the court did not articulate each factor it relied upon in denying Lueras's motion, it had no obligation to. (See, e.g., *In re Coley*, *supra*, 55 Cal.4th at p. 560 [no "requirement of an on-the-record statement of reasons when a court declines to strike a prior"].) In "the absence of an affirmative record to the contrary," we presume the trial court considered the relevant factors. (*People v. Myers*, *supra*, 69 Cal.App.4th at p. 310.) Indeed, the mere fact that the court discussed certain factors "does not mean that it considered only" those factors. (*Ibid.*)

Moreover, having determined the court sufficiently considered the "relevant factors," we further conclude the record supports the court's ruling that Lueras's circumstances were not "extraordinary" such that he should have been considered outside the spirit of the Three Strikes law. (*Carmony*, *supra*, 33 Cal.4th at pp. 377–378.) While Lueras's reported renunciation of his prior gang affiliation is to be commended, as is his ability to maintain employment after his custodial release, these factors do not outweigh his lengthy criminal history, both as a juvenile and an adult, before the strike convictions and including a prior domestic violence conviction involving a different victim, or, as the probation department report noted, his assessed "high risk" of criminal and domestic violence re-offense. As stated, Lueras also committed the present offenses beginning only one and half years after completing parole for his 2017 strike. The two incidents increased in

seriousness, progressing from battery to strangulation and taking place in front of her teenage child, who was prevented from calling for help. Even after a postarrest “peaceful contact” restraining order was issued, Lueras continued to contact Doe and show up at her home uninvited—“numerous times of the hour, midnight, 2:00 in the morning, 1:00 in the morning, 5:00 in the morning”—despite being asked repeatedly to stop and necessitating the elevation of the restraining order to “no-contact” and “stay-away.” In light of the nature of his present offenses and prior strike convictions, his “horrendous” criminal history, his background, his continuing minimization of his culpability, and his risk of re-offense, it was reasonable for the trial court to conclude that Lueras did not fall outside the spirit of the Three Strikes law such that his two prior strike convictions warranted dismissal. (*Ibid.*)

II. Entitlement to Additional Presentence Conduct Credits

Lueras contends that the trial court erred in failing to award two days of presentence conduct credits to that which he was statutorily entitled. The Attorney General concedes that the trial court’s failure to award Lueras his presentence conduct credits was error.

“Section 4019 specifies the rate at which prisoners in local custody may earn credit against their sentences for good conduct while in custody.” (*People v. Whitaker* (2015) 238 Cal.App.4th 1354, 1358.) Section 4019, subdivision (f) provides: “It is the intent of the Legislature that if all days are earned under this section, a term of four days will be deemed to have been served for every two days spent in actual custody.”

As noted, the court awarded Lueras three days of custody credit for the three days he was in custody: March 12, 2024, when he was initially arrested, and May 1 and 2, 2024, when Lueras was re-arrested on a warrant

before he again secured bail. Because Lueras served three days in custody before being sentenced, we agree that the court should have awarded an additional two days of conduct credit under section 4019, and the abstract of judgment should have reflected a total of five days: three days actual plus two days of conduct credit. (§ 4019, subd. (f).)

DISPOSITION

The matter is remanded to the trial court with directions to calculate the conduct credits and amend the abstract of judgment to reflect the total custody credits consistent with section 4019; the corrected abstract of judgment shall thereafter be forwarded to the Department of Corrections and Rehabilitation. In all other aspects, the judgment is affirmed.

DESAUTELS, J.

We concur:

RICHMAN, ACTING P. J.

MILLER, J.

People v. Luera (A172397)