Filed 12/30/25 P. v. Alvarez CA1/5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. ADRIAN CERVANTES ALVAREZ, Defendant and Appellant.	A171040 (Sonoma County Super. Ct. No. SCR-739956-1)

Defendant and appellant Adrian Cervantes Alvarez (appellant) appeals from the trial court's judgment following his conviction of attempted murder and other offenses. We affirm.

PROCEDURAL BACKGROUND

In March 2022, the Sonoma County District Attorney filed a first amended information charging appellant with the premeditated attempted murder of Jane Doe[1] (Pen. Code, §§ 664, 187, subd. (a); count one),[2] assault with a deadly weapon (§ 245, subd. (a)(1); count two), and infliction of corporal injury against a child's parent (§ 273.5, subd. (a); count three). Counts one and three alleged that appellant personally used a deadly weapon

[1] To protect the victim's privacy, at trial she was identified as "Jane Doe."

[2] All undesignated statutory references are to the Penal Code.

(§ 12022, subd. (b)(1)), and all three counts alleged he personally inflicted great bodily injury under circumstances involving domestic violence (§ 12022.7, subd. (e)). The information further alleged that appellant had sustained two prior strike convictions (§§ 667, subds. (d)–(e), 1170.12, subds. (b)–(c)) and two prior serious felony convictions (§ 667, subd. (a)). The information also alleged aggravating factors with respect to the crimes and appellant.

Appellant repeatedly brought motions under *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*) seeking to replace his trial counsel, Jospeh Stogner. The trial court heard and denied appellant's motions in March 2023, May 2023, June 2023, August 2023, twice in September 2023, and January 2024. The jury found appellant guilty on all three counts and found true the personal use allegations, but the jury found that the attempted murder was committed without premeditation and that the great bodily injury allegations were not true. The jury found true all aggravating factors, except an allegation that appellant engaged in violent conduct that indicated a serious danger to society. The jury found that appellant had two prior strike and serious felony convictions.

In May 2024, the trial court sentenced appellant to a total prison term of 27 years to life plus six years. The sentence was comprised of 27 years to life for attempted murder, plus one year for personal use of a deadly weapon and five years for one of the prior serious felony convictions. The court stayed terms of 25 years to life on the other counts pursuant to section 654.

The present appeal followed.

FACTUAL BACKGROUND

Jane Doe and appellant have two children together; their relationship ended in February 2019, at which point they began coparenting while living

separately. Appellant lived with his family in an apartment complex in Santa Rosa.

Jane Doe testified that, in the months preceding the August 2020 incident underlying the present charges, appellant very often made irrational accusations against her. He accused her of doing things to him; even though the accusations were irrational, he "seemed very confident about what he was accusing [her] of." In January 2020, during a verbal altercation between appellant and Jane Doe outside her workplace, appellant knocked her down and told her "he was going to leave [her] brains splattered on the floor in front of [their] daughter."

On August 4, 2020, appellant asked Jane Doe if he could visit with their children, who were then five and three years old. Jane Doe picked appellant up from his apartment complex; he "seemed fine" and did not appear to be under the influence of any drugs. Jane Doe dropped appellant and the children off at a park, then picked them up later and drove to appellant's apartment complex.

Jane Doe parked at appellant's apartment complex; she was in the driver's seat, appellant was in the passenger's seat, and the children were in the back seat. Rather than exiting the car, appellant handed her a small white piece of paper. It was a handwritten note with instructions not to read it out aloud. The note said "something along the lines of that [Jane Doe] was spying on him or [she] had something that belonged to him and that if [she] didn't give it back to him or [she] didn't admit this thing that [she] was doing to him, that he would kill [her]." Jane Doe was confused when she read the note; she had "no idea what [appellant] was talking about." Appellant immediately took the note back after Jane Doe read it. She asked if the note was a joke, and he responded that it was not. Appellant became angry and

refused to explain what the note meant. After 20 minutes of trying to understand what appellant was talking about, Jane Doe asked appellant to exit the car, but he refused. She told him she was going to call his mother or sister to come get him, but, when she reached for her cell phone, appellant grabbed it and told her she could not call anybody.

Jane Doe became concerned, and she sounded her car horn three times in order to get someone's attention and help. As soon as she did that, appellant started "jabbing" her "in the neck." Eventually, appellant pushed her out of the car and onto the ground. He then started "dragging" her and "banging [her] head against the ground." Jane Doe believed she lost consciousness. She became aware of someone helping her stand; appellant was gone and she had a "huge bump" on the back of her head. Someone found scissors and Jane Doe realized appellant had been jabbing her with the scissors. She felt "a lot of pain" in her neck and there was "a lot of blood."

Santa Rosa police officers were dispatched to the apartment complex at 10:00 p.m. One officer testified that Jane Doe was "very upset" and could only say that appellant had hurt her. The officer observed "approximately 10 puncture wounds inside of her neck consistent with . . . a stabbing." Jane Doe was bleeding and she was transported to a hospital. Another officer recovered from the ground a pair of scissors with "dried red liquid" on them. The officer also visited appellant's apartment, but he was not there.

The next day, a Santa Rosa police officer was dispatched to appellant's apartment complex based on a report that he "wanted to turn himself in." Appellant was transported to jail and interviewed there. Appellant said he had previously visited the police department three times to report that Jane Doe was " 'fuckin' around with [him]' " and that she had hacked his cell phone. Regarding the previous day's incident, appellant admitted he

confronted Jane Doe, saying, " '[T]ell me the truth, ya know? Like, stop fucking with me and stop doing the things you, that you are doing all the time to me.' " Appellant continued to complain about Jane Doe, and the officer interrupted him to ask whether appellant wanted to talk about how Jane Doe " 'somehow got stabbed in the neck.' " Appellant said he did not want to talk about that. The officer also asked appellant about scratches on his body. Appellant said he got the scratches " '[w]hen I run from you guys. . . . When I run when I do what I did.' "

In February 2021, a district attorney investigator interviewed a neighbor, Maria A., who witnessed the August 2020 incident. She told the investigator that she heard a commotion outside and saw appellant assaulting Jane Doe. She "threw herself at [appellant] to get him to stop." She called to appellant by name, and he looked at her and it was "as if he didn't recognize [her] and didn't know [her]." After she intervened, he backed away and left the area.

At trial, Maria A. testified she had "little memory" of the incident, and she told a different story than she told to the investigator. She testified that Jane Doe and appellant "were just arguing" and that she pulled appellant "and told him to calm down." She did not recall the February 2021 statements to the investigator.

Appellant's Testimony

Appellant testified that, on the day of the offenses, Jane Doe drove him and their children to a park so he could teach the children how to fly a kite. He had scissors that he had used to fix the kite in a pocket of his shorts. Jane Doe picked them up from the park at about 9:00 p.m.; appellant left his kite on a table at the park.

Once back at his apartment complex, appellant confronted Jane Doe about "why she was doing all those things to [him]." He asserted that "she was trying to kill [him] along with all her friends." Earlier on the day of the offenses, a friend of Jane Doe's had attempted to kill him on a roofing job by giving him a faulty safety harness. He explained that Jane Doe and her friends "were always like putting me at risk, every job I got. They were maybe trying to make it seem like it was some sort of an accident at work, but it wasn't an accident, it was already planned."

Appellant denied handing Jane Doe a note. He admitted becoming "frustrated" and "desperate" as they argued in the car, because he had gone to the police three times but no action had been taken against Jane Doe. When Jane Doe tried to call someone, appellant slapped the phone out of her hands. She sounded the car's horn and appellant struck her with the scissors that had been in his pocket. They were in his hands because he picked them up after they fell out of his pocket. Appellant denied he was trying to kill Jane Doe. He "lost control."

Appellant pushed Jane Doe out of the car. He followed and they were "struggling." He pushed her and she fell, but he did not slam her head against the ground. He then heard Maria A. call out to him. He testified, "I just heard that she said something like no and I left." He was "scared," and he ran through some bushes that scratched his arms and legs. As he left, he intentionally threw his phone on the ground. The following day, he turned himself into the police. He did not know he would be charged with attempted murder.

DISCUSSION

I. *Appellant Has Not Shown* Marsden *Error*

Appellant contends the trial court abused its discretion by denying his numerous motions under *Marsden*, *supra*, 2 Cal.3d 118 to substitute defense counsel, Mr. Stogner. The court did not abuse its discretion.

A. *Relevant Legal Background*

" 'Under the Sixth Amendment right to assistance of counsel, " ' "[a] defendant is entitled to [substitute another appointed attorney] if the record clearly shows that the first appointed attorney is not providing adequate representation [citation] or that defendant and counsel have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result." ' " [Citation.] Furthermore, " ' "When a defendant seeks to discharge appointed counsel and substitute another attorney, and asserts inadequate representation, the trial court must permit the defendant to explain the basis of his contention and to relate specific instances of the attorney's inadequate performance." ' " ' " (*People v. Valdez* (2004) 32 Cal.4th 73, 95 (*Valdez*).)

A " 'defendant is entitled to relief if the record clearly shows that the appointed counsel is not providing adequate representation or that defendant and counsel have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result.' " (*People v. Taylor* (2010) 48 Cal.4th 574, 599 (*Taylor*).) A "defendant's claimed lack of trust in, or inability to get along with, an appointed attorney," or "heated words" between client and attorney, do not require substitution of counsel. (*People v. Jones* (2003) 29 Cal.4th 1229, 1246 (*Jones*); *People v. Smith* (1993) 6 Cal.4th 684, 696–697.) " '[A] trial court is not required to conclude that an irreconcilable conflict exists if the defendant has not made a sustained good faith effort to

work out any disagreements with counsel.' " (*People v. Myles* (2012) 53 Cal.4th 1181, 1207.) " 'A defendant does not have the right to present a defense of his own choosing, but merely the right to an adequate and competent defense. [Citation.] Tactical disagreements between the defendant and his attorney do not by themselves constitute an "irreconcilable conflict." ' " (*Valdez*, *supra*, 32 Cal.4th at p. 95.)

To the extent credibility issues arise at a *Marsden* hearing, the trial court is " 'entitled to accept counsel's explanation.' " (*People v. Smith*, *supra*, 6 Cal.4th at p. 696.) The trial court's denial of a *Marsden* motion is reviewed for abuse of discretion. (*People v. Streeter* (2012) 54 Cal.4th 205, 230.) Denial of the motion is not an abuse of discretion " 'unless the defendant has shown that a failure to replace counsel would substantially impair the defendant's right to assistance of counsel.' " (*Taylor*, *supra*, 48 Cal.4th at p. 599.)

B. *Relevant Factual Background*

Appellant made his first *Marsden* motion in March 2023. He complained that, in six months of representation, his counsel Mr. Stogner had not adequately investigated his case.[3] Mr. Stogner informed the court that he had been handling other serious cases that were set to go to trial and that he would give appellant's case "the same kind of attention, investigation and law and motion practice" that he had given his other cases. The trial court observed that Mr. Stogner "ha[d] not been just sitting around not doing anything. He's been obligated to other clients." The court found that appellant was being adequately represented by Mr. Stogner and denied the motion.

[3] Appellant also complained that Mr. Stogner had failed to ensure that he was well treated in jail, but he does not argue on appeal that the trial court erred in failing to grant his motions on that ground.

Appellant made his second *Marsden* motion on May 24, 2023. He again argued that Mr. Stogner had not properly investigated his case. Mr. Stogner acknowledged the seriousness of the charges and expressed his intent to "vigorously defend" appellant. He also acknowledged it would be a challenge because appellant told him that he did not wish to meet with him. Mr. Stogner stated that he had begun subpoenaing evidence and would be prepared for trial. The trial court observed that appellant had asserted "several previous *Marsdens* [with respect] to previous counsel as well" and found that any "deterioration in" Mr. Stogner and appellant's "relationship has been occasioned solely by [appellant's] willful attitude." The court further found that appellant's refusal to meet with his counsel "does not hinder" appellant's representation given Mr. Stogner's "level of experience." The trial court denied the motion.

Appellant made his third *Marsden* motion on May 31, 2023. Appellant claimed his counsel told him that he was not going to research or investigate the case. Mr. Stogner said that was "completely inaccurate" and that, in fact, he had assigned an investigator to appellant's case, obtained all electronic discovery, and subpoenaed the Santa Rosa Police Department. He acknowledged the interactions with appellant had "become progressively more and even outrageously hostile and the communications [had] approximately 95 percent been about [appellant's] rejection of [Mr. Stogner] as an attorney, rejection of the work [counsel had] done up to [that] point and an overall wall of uncooperativeness" from appellant. Appellant's attitude had made it "almost impossible to solidify and concretize" "very basic and fundamental aspects of the defense" because of appellant's "refusal to do anything in communication except express a hostility and an antipathy and a distaste for the representation." The trial court denied the *Marsden* motion,

finding Mr. Stogner credible and finding that "any current deterioration in the relationship has been occasioned solely due to [appellant's] willful and recalcitrant or defiant attitude and there's no reason why in the future [appellant] cannot be adequately represented by Mr. Stogner."

Appellant made his fourth *Marsden* motion in August 2023. He said that he did not trust his counsel because Mr. Stogner had lied to him and had not properly investigated the case. Mr. Stogner denied appellant's claims and detailed his investigations and preparations. The trial court denied the motion, referencing appellant's "countless *Marsden* motions" against Mr. Stogner and previous attorneys. The court found that counsel had properly represented appellant and would continue to do so and that "[a]ny continuing deterioration in [their] relationship does appear to be caused solely by [appellant's] attitude toward the case and the process."

Appellant made his fifth *Marsden* motion on September 8, 2023, again challenging his counsel's preparation for trial. Mr. Stogner assured the trial court that he had prepared for trial "completely and effectively." He had explored the possibility of a defense based on appellant's lack of intent to kill, but appellant had refused to participate in a psychological evaluation. He observed that his meetings with appellant were "abusive" in the sense that he had received "bilious and effusive statements and aggressive sort of verbal attacks" from appellant. Nevertheless, Mr. Stogner stated that he had not been personally impacted and that he had "overcome" the "difficulties" created by appellant's behavior. The trial court observed that appellant's claims were "repetitive in nature," found that the breakdown in the relationship had not prevented Mr. Stogner from continuing to properly represent appellant, found that the deterioration in the relationship was "caused solely" by appellant, and denied the motion.

Appellant made his sixth *Marsden* motion on September 15, 2023. Appellant accused his counsel of discriminating against him and of acting as a prosecutor. Mr. Stogner denied the claims, and, after the trial court heard competing accounts from appellant and his counsel regarding their recent interactions, the court denied the motion. The court observed that Mr. Stogner is "a professional who has been in this business for decades" and found that he could adequately represent appellant and that appellant's attitude was the cause of the deterioration in their relationship.

Appellant made his seventh and final *Marsden* motion on the day of Jane Doe's testimony in January 2024. Appellant complained about his counsel's trial strategy in various respects. Mr. Stogner said he was doing his "very best" to present appellant's defense. He made some comments about trial strategy and observed that he had attempted to ascertain whether there was some "potential psychological or psychiatric issues that were germane in this case," but appellant "refused to meet with the psychologist for the evaluation." Nevertheless, he observed that "the fact that [appellant] was going through some difficulties" at the time of the present offenses was "going to be elicited from Jane Doe and also I think is well represented in the statement he made to law enforcement when he was interviewed." The trial court denied appellant's motion, finding that, despite the conflicts with appellant, Mr. Stogner had properly represented appellant and would continue to do so.

C. *Analysis*

Appellant has not shown the trial court abused its discretion in denying his repeated *Marsden* motions.

We defer to the court's credibility determinations and the court's findings that Mr. Stogner provided adequate representation and that the

conflict with appellant did not prevent counsel from continuing to do so. Indeed, appellant concedes the record supports a conclusion that "[Mr.] Stogner provided appellant with adequate representation." He argues the trial court nevertheless should have granted the *Marsden* motions because he and counsel "were embroiled in an irreconcilable conflict such that ineffective representation was likely to result." We reject that argument because appellant has not shown error in the court's findings to the contrary.

Moreover, appellant has not shown error in the trial court's findings that any conflict was caused by appellant's groundless refusal to cooperate with Mr. Stogner. That circumstance justified denying the *Marsden* motions. As respondent argues, the Supreme Court's analysis in *People v. Smith* (2003) 30 Cal.4th 581, 606, is directly on point: "A defendant may not effectively veto an appointment of counsel by claiming a lack of trust in, or inability to get along with, the appointed attorney. [Citation.] Moreover, the trial court need not conclude that an *irreconcilable* conflict exists if the defendant has not tried to work out any disagreements with counsel and has not given counsel a fair opportunity to demonstrate trustworthiness. [Citation.] Defendant did not show that defense counsel did anything to cause any breakdown in their relationship. '[A] defendant may not force the substitution of counsel by his own conduct that manufactures a conflict.' " (See also *Taylor*, *supra*, 48 Cal.4th at p. 600 ["The trial court reasonably could conclude, moreover, that replacement of counsel was not required because any deterioration in the attorney-client relationship that had occurred was due to defendant's willful, defiant attitude or to a mental problem that was either feigned or real"]; *Jones*, *supra*, 29 Cal.4th at p. 1246 ["If a defendant's claimed lack of trust in, or inability to get along with, an appointed attorney were sufficient to compel appointment of substitute

counsel, defendants effectively would have a veto power over any appointment, and by a process of elimination could obtain appointment of their preferred attorneys, which is certainly not the law"].)

Appellant fails to show the reasoning in *People v. Smith*, *supra*, 30 Cal.4th 581 is inapplicable here; indeed, appellant fails even to address *Smith* in his reply brief on appeal. Instead, appellant relies on several older federal circuit court cases that precede the California Supreme Court's decision. Those cases are distinguishable and, in any event, do not address the reasoning employed in *Smith*. Moreover, appellant characterizes the applicable rule of law to be that, "[w]hen based on legitimate reasons, a defendant's lack of trust in defense counsel is grounds for substitution of counsel." But, here, the trial court found the lack of trust was *not* based on legitimate reasons and appellant has not shown the court erred in that finding.

Appellant has not shown error in denial of his *Marsden* motions.[4]

II. *The Trial Court Did Not Err in Giving a Flight Instruction*

Over appellant's objection, the trial court instructed the jury on flight in the language of CALCRIM No. 372, as follows: "If the defendant fled immediately after the crime was committed, that conduct may show that he was aware of his guilt. If you conclude that the defendant fled, it is up to you to decide the meaning and importance of that conduct. However, evidence that the defendant fled cannot prove guilt by itself." Appellant contends the

[4] Because appellant has not shown error, we need not and do not consider whether any error was harmless.

trial court erred because the instruction was not supported by the evidence in the record.[5] The claim fails.

"In general, a trial court must give a requested jury instruction if there is substantial evidence in the record supporting such an instruction." (*People v. Mitchell* (2019) 7 Cal.5th 561, 583.) " 'In general, a flight instruction "is proper where the evidence shows that the defendant departed the crime scene under circumstances suggesting that his movement was motivated by a consciousness of guilt." ' [Citations.] Evidence that a defendant left the scene is not alone sufficient; instead, the circumstances of departure must suggest 'a purpose to avoid being observed or arrested.' [Citations.] To obtain the instruction, the prosecution need not prove the defendant in fact fled, i.e., departed the scene to avoid arrest, only that a jury *could* find the defendant fled and permissibly infer a consciousness of guilt from the evidence." (*People v. Bonilla* (2007) 41 Cal.4th 313, 328.)

As respondent points out, following the incident, instead of going home, appellant left the area of the apartment complex. (Cf. *People v. Pensinger* (1991) 52 Cal.3d 1210, 1244 ["evidence that the accused left the scene and went home is not evidence of flight"].) Even more importantly, he essentially admitted he fled the scene to avoid arrest in his police interview. During that interview, the interrogating officer asked appellant about scratches she observed on his body. Appellant responded that he sustained the scratches " '[w]hen I run from you guys. . . . When I run when I do what I did.' " Appellant fails to explain in his briefs on appeal why those comments are

---

[5] We reject appellant's additional assertion that the trial court failed to make a finding and "simply concluded that because the prosecutor planned to argue flight, it had a sua sponte duty to give the instruction." The court's decision to give the instruction included an implied finding that the record supported the instruction.

insufficient to support the flight instruction. Moreover, appellant admitted in his testimony that he intentionally threw his cell phone on the ground when he left the area. A jury could reasonably infer he did so to avoid being tracked by his phone; appellant cites to no testimony where he offered any other explanation, and he offers no other reasonable explanation for that action on appeal.

Appellant argues insufficient evidence supported the flight instruction because "appellant was known to everyone involved in or witnessing the assault" and because he turned himself in within 24 hours. But appellant cites no authority that the instruction is improper where the flight is only temporary or where eventual arrest is likely because the defendant's identity is known. Temporary and ineffective flight can reflect a consciousness of guilt, as well as sustained and effective flight. Under the instruction, it is up to the jury "to decide the meaning and importance of [appellant's] conduct." (CALCRIM No. 372; see also *People v. Rhodes* (1989) 209 Cal.App.3d 1471, 1477 ["Alternative explanations for flight conduct go to the weight of the evidence, which is a matter for the jury, not the court, to decide"].) Appellant also references his argument below that there was no evidence he knew he would be charged with attempted murder. But appellant fails to explain why or provide citations that his awareness he would be charged with attempted murder is relevant—the issue is whether his departure permitted an inference of consciousness of guilt in general, not consciousness of guilt of a particular crime.

Appellant has not shown the trial court erred in giving the flight instruction.[6]

---

[6] Because appellant has not shown error, we need not and do not consider whether any error in giving the instruction was prejudicial.

III. *Appellant Has Not Shown Sentencing Error*

Appellant asserts several claims of error related to the trial court's denial of his motion to strike the five-year enhancement under section 667, subdivision (a) for his prior serious felony conviction. The claims fail.

At issue is the trial court's discretion to dismiss an enhancement under section 1385, subdivision (c). Section 1385, subdivision (c)(1) states, "Notwithstanding any other law, the court shall dismiss an enhancement if it is in the furtherance of justice to do so, except if dismissal of that enhancement is prohibited by any initiative statute." Then, section 1385, subdivision (c)(2) provides, "In exercising its discretion under this subdivision, the court shall consider and afford great weight to evidence offered by the defendant to prove that any of the mitigating circumstances in subparagraphs (A) to (I) are present. Proof of the presence of one or more of these circumstances weighs greatly in favor of dismissing the enhancement, unless the court finds that dismissal of the enhancement would endanger public safety. 'Endanger public safety' means there is a likelihood that the dismissal of the enhancement would result in physical injury or other serious danger to others."

Here, the trial court acknowledged the applicability of one of the mitigating circumstances—that the "enhancement is based on a prior conviction that is over five years old" (§ 1385, subd. (c)(2)(H)). But the court declined to dismiss the enhancement, reasoning, "the Court does find that [appellant] is a grave risk to public safety and especially any domestic partner or former domestic partner in particular. There is no question in this Court's mind that [appellant] has proven himself to be very dangerous. [¶] I further note his incarcerated behavior, he's alleged to have had a major rule violation for [a] physical fight with a fellow inmate. That's how he behaves

incarcerated. He's fighting. He's also violating other rules by damaging property and obtaining contraband. [¶] So despite [section] 1385[, subdivision](c), the Court is aware that I shall strike it unless I make the findings, and in this case based on these circumstances, the violence I see in the 2008 case, the 2020 case and continued violence while incarcerated, I do make that finding. I will not be striking that penalty."

First, appellant contends the trial court applied the wrong standard under section 1385, subdivision (c). He argues the court found that he *presently* poses a risk to public safety, but the court failed to find that he would *still* pose that risk after spending more than two decades in prison. Appellant relies on *People v. Gonzalez* (2024) 103 Cal.App.5th 215, in which the trial court had an *express* "singular focus on whether the defendant *currently* poses a danger." (*Id.* at p. 228.) There, the defendant argued the trial court should consider whether he would still be dangerous when released from prison, but the court held it was obligated to consider *only* present dangerousness. (*Id.* at pp. 223–224; see also *id.* at p. 227 ["The trial court believed that it was required to decide whether the defendant 'currently at the time of sentencing represent[s] a danger to society' "].) *Gonzalez* held that narrow focus was improper, reasoning, "Although the current dangerousness of the defendant is an appropriate factor to consider, . . . a crucial part of the inquiry is how the dismissal of the enhancement will impact the length of the defendant's sentence. A currently dangerous defendant who will be released from prison within a short timeframe might be found by the trial court to pose a greater danger to the public than a defendant who is currently dangerous but who has no prospect of release from prison until he is elderly. [Citation.] Further, an inquiry into whether public safety will be endangered by the dismissal of an enhancement for a

defendant serving a lengthy indeterminate sentence should also take into account that the defendant's release from prison is contingent on review by the Board of Parole Hearings . . . , who will have the opportunity to assess the defendant's dangerousness at that time. [Citations.] That future review will act as a safety valve against a release that would endanger the public and is relevant to a trial court's analysis of whether the dismissal of an enhancement imposed on a defendant serving an indeterminate prison term will endanger public safety." (*Gonzalez*, at p. 228.)

We agree with *Gonzalez*, but here the trial court did not expressly limit its analysis to present dangerousness, and its emphasis on appellant's continued dangerousness over time impliedly reflects a finding that appellant is likely to continue to be dangerous despite his incarceration. " 'The trial court is not required to state reasons for declining to exercise its discretion under section 1385' [citations], and 'is presumed to have considered all of the relevant factors in the absence of an affirmative record to the contrary.' " (*People v. Brugman* (2021) 62 Cal.App.5th 608, 637.) Accordingly, "[w]hen, as here, the record is silent as to" whether the court conducted a forward-thinking inquiry, "we presume that the trial court ' "correctly applied the law." ' " (*Ibid.*) Because the record does not affirmatively rebut this presumption, appellant has not shown error.

Next, appellant contends that, even if the trial court did not misunderstand the scope of its discretion, the court abused its discretion in denying his motion to strike the five-year enhancement. Appellant argues that, in addition to the circumstance that his prior conviction was more than five years old, there were additional applicable section 1385 mitigating factors, including that multiple enhancements were alleged, the prior serious felony enhancement would result in a sentence of over 20 years, and the

current offense was connected to mental illness. (§ 1385, subd. (c)(2)(B), (C) & (D).) Respondent appears to concede that the circumstance that the trial court had already imposed a one-year weapon enhancement was another applicable mitigating factor (§ 1385, subd. (c)(2)(B)), but respondent disputes the applicability of the other two alleged mitigating factors.

As to the factor "[t]he application of an enhancement could result in a sentence of over 20 years" (§ 1385, subd. (c)(2)(C)), respondent points out that the court in *People v. Torres* (2025) 113 Cal.App.5th 88 held that the factor does not apply where the challenged enhancement *itself* does not result in a sentence exceeding 20 years. The court reasoned, "A sentence exceeding 20 years could *result* from an enhancement where a sentence of that length arises as a consequence of the enhancement. [Citation.] Thus, the effect of applying the enhancement itself leads to a sentence exceeding 20 years. The word result denotes a causal relationship between the enhancement and a sentence exceeding 20 years. Accordingly, this subdivision concerns 'enhancements increasing [a] sentence above 20 years.' " (*Id.* at p. 93.) We follow *Torres* and conclude the section 1385, subdivision (c)(2)(C) mitigating factor did not apply.

Appellant also argues the trial court failed to "afford great weight to" the mitigating circumstance that his offense was "connected to mental illness." (§ 1385, subds. (c)(2), (c)(2)(D).) Section 1385, subdivision (c)(5) provides that "a mental illness is a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder but excluding antisocial personality disorder, borderline personality disorder, and pedophilia." The subdivision continues, "[a] court may conclude that a defendant's mental

illness was connected to the offense if, after reviewing any relevant and credible evidence, . . . the court concludes that the defendant's mental illness substantially contributed to the defendant's involvement in the commission of the offense." (*Ibid.*) Although appellant's behavior during the offense and before the trial court provided reason to believe appellant may have mental health issues, appellant cites no evidence in the record that he suffers from an applicable mental disorder within the meaning of the statute. Accordingly, he has not shown error. (See *People v. Ortiz* (2023) 87 Cal.App.5th 1087, 1095 [no error where, despite defendant's schizophrenia diagnosis, there was no evidence he displayed symptoms at the time of the offense].)

Finally, we conclude appellant has not shown the trial court abused its discretion in denying his motion to strike the five-year enhancement despite the applicability of the section 1385, subdivision (c)(2)(B) and (H) mitigating factors for multiple enhancements and a prior conviction over five years old. As the trial court explained, appellant's record demonstrated a pattern of violence that was not corrected by incarceration. In a 2008 domestic violence incident, appellant repeatedly pushed, grabbed, and choked the victim for hours. He also threatened to kill her with a knife and raped her. Appellant was paroled from prison in 2012 and deported; he then reentered the country at some point and committed the present offenses in August 2020. The trial court characterized the present offense as "eerily similar" to the 2008 attack and commented that appellant has a pattern of violence against his domestic partners whenever he gets "an idea in his head." Finally, in prison appellant engaged in a physical altercation with another inmate, damaged property, and obtained contraband.

We cannot say that the trial court's determination that dismissal of the enhancement "would endanger public safety" (§ 1385, subd. (c)(2)) was "so irrational or arbitrary that no reasonable person could agree with it." (*People v. Carmony* (2004) 33 Cal.4th 367, 377; see also *People v. Mendoza* (2023) 88 Cal.App.5th 287, 299.)

DISPOSITION

The trial court's judgment is affirmed.

SIMONS, J.

We concur.

JACKSON, P. J.
CHOU, J.

(A171040)