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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

DARRELL DWAYNE BOSTON,

Defendant and Appellant.

A129771

(Napa County  
Super. Ct. No. CR145742)

Darrell Dwayne Boston appeals from a judgment upon a jury verdict finding him guilty of robbery (Pen. Code,<sup>1</sup> § 211). The jury also found true the allegation that defendant used a deadly weapon in the commission of the offense (§ 12022, subd. (b)(1)). In a bifurcated proceeding, the court considered the issue of the charged prior convictions—whether defendant suffered multiple prior strikes and prior serious felony convictions (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), 667, subd. (a)); and three prior prison terms (§ 667.5, subd. (b)). The court determined the issue of identity—that it was defendant who suffered the prior convictions, and as to the strike convictions, the court determined that they were brought and tried separately. The jury then considered whether the allegations that defendant suffered the prior convictions in three separate cases was true. The jury found the prior conviction allegations to be true. Defendant contends that the trial court abused its discretion in failing to strike the prior strike allegations in the interests of justice. He also argues that he was entitled to a jury trial on

<sup>1</sup> All further statutory references are to the Penal Code.

the issue of whether he was identified as the person who suffered the alleged prior convictions. We affirm.

### **FACTUAL BACKGROUND**

On April 20, 2009, defendant, armed with a BB gun, and Marques Williams committed a robbery of Kulbir Singh Dhillon. Defendant approached Dhillon, as he was about to make a cash deposit of about \$33,000 in Westamerica Bank in Napa. Defendant pulled the gun out, demanded that Dhillon give him the money, hit Dhillon with the gun, kicked him, and said “you are dead.” Defendant took the money and fled in a car driven by Williams. Williams knew that Dhillon would be making the deposit based on an inside tip and surveillance of Dhillon. Defendant and Williams were subsequently apprehended.

At sentencing, the trial court denied defendant’s motion to dismiss the strike priors, but struck the section 667.5, subdivision (b) allegation. The court sentenced defendant to 25 years to life plus one year for the dangerous or deadly weapon allegation, and imposed two five year terms pursuant to section 667, subdivision (a) for a total term of 36 years to life.

### **DISCUSSION**

Defendant contends that the trial court abused its discretion in failing to strike the prior strike convictions in the interests of justice under section 1385 and *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 530 (*Romero*). He argues that the convictions were stale as the first set occurred 26 years ago and the second set of convictions occurred 18 years prior to the current offense.

In *Romero*, the court held that the three strikes law did not preclude the trial court from exercising its power under section 1385, subdivision (a) to dismiss a prior conviction allegation in the furtherance of justice. (*Romero, supra*, 13 Cal.4th at p. 530.) We review a court’s decision not to dismiss or strike a prior serious or violent felony conviction allegation for abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 374-375.) In ruling on a motion to dismiss a prior strike allegation, the court 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.' ” (*Id.* at p. 377, quoting *People v. Williams* (1998) 17 Cal.4th 148, 161.)

Here, the trial court denied defendant's *Romero* motion, stating “Mr. Boston has sustained 26 prior Strike allegations or Strike convictions. Nine 211s occurred in 1984 and an additional 17 occurred in 1992. [¶] And I have considered [defense counsel's] *Romero* motion and the motion to strike those prior Strike convictions and I'm going to deny that request. I believe that Mr. Boston is the type of offender that the Legislature had in mind when [it] implemented the Three Strikes law, where you have a person that has repeatedly violated the serious and violent felony laws as Mr. Boston has by committing this many robbery convictions within the last 20 years, 30 years. [¶] He just doesn't get it that he cannot go out and rob people. And whatever I feel about Mr. Boston or anyone feels about Mr. Boston personally—I don't believe Mr. Boston is a bad person, but he has committed bad crimes and he's been a danger to our community. He was a danger to the community in Oakland and in San Leandro when he committed his prior robbery convictions. And I do not believe that it's appropriate to strike those prior Strike convictions.”

The trial court did not abuse its discretion in denying the *Romero* motion. While defendant contends that his prior convictions were committed years ago, the record shows that he has spent little time out of custody over the past 26 years. He was convicted of nine counts of robbery and one count of auto theft in 1984 and sentenced to six years. He was subsequently paroled in late 1987, only to be returned to prison for a parole violation the following year. In December 1989, defendant was convicted of felony auto theft and sentenced to 16 months in state prison. He was released on parole in July 1990, but was in and out of prison for the next year and a half for parole violations. In July 1992, he was arrested again and subsequently charged and convicted of 17 counts of robbery and sentenced to a prison term of 18 years. He was ultimately

discharged in that case in August 2006. The present offense occurred less than three years later. Hence, contrary to defendant's argument, his record establishes that he is a career criminal who has a lengthy and violent criminal record—the type of individual whose conduct places him squarely within the spirit of the three strikes law.

Defendant argues that the court abused its discretion in failing to strike the prior offenses because it did not consider any of the facts and circumstances of the prior offenses. He also contends that the court failed to consider his remorse and his minimal role in the planning of the robbery.

The record belies defendant's arguments. The court had before it the probation report as well as the parties' sentencing memoranda, and the records of the prior convictions. The documentation provided by the People proved defendant's prior convictions, and the court's comments during the hearing reflect that it considered defendant's character but found it was inappropriate to strike the prior convictions given defendant's extensive criminal record. Defendant has not demonstrated that the court abused its discretion in denying his *Romero* motion.

Finally, defendant contends that he was entitled to a jury trial on the issue of whether he was the person who committed the alleged prior convictions. He acknowledges that the California Supreme Court has ruled that defendants are not entitled to a jury trial on the issues of the precise facts of a prior conviction. (*People v. McGee* (2006) 38 Cal.4th 682, 686, 706-707 (*McGee*)). He, however, raises the issue to preserve it should he seek further review in the federal courts. We are bound by the Supreme Court's ruling in *McGee* and therefore reject defendant's contention. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

#### **DISPOSITION**

The judgment is affirmed.

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RIVERA, J.

We concur:

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REARDON, ACTING P. J.

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SEPULVEDA, J.\*

\* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.