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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.

AMENI KWAME CROCKETT,

Defendant and Appellant.

A133339

(Lake County
Super. Ct. No. CR923108)

I. INTRODUCTION

On March 7, 2011, appellant pled no contest to one count of a six-count information that had been filed against him in January of that year. That count charged battery upon a peace officer with injury, in violation of Penal Code section 243, subdivision (c)(2).¹ The charging information also alleged a prior serious or violent felony under sections 1170.12, subdivisions (a)-(d) and 667, subdivisions (b)-(i), as well as a prior prison term served (see § 667.5, subd. (b)), both of which appellant admitted at the time of his no contest plea. The court later denied appellant's motion, brought under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*), to dismiss his prior strike, denied him probation, and sentenced him to serve five years in state prison. Appellant appeals, claiming an abuse of discretion by the trial court, but we affirm the judgment entered, including the sentence imposed.

¹ All further statutory references are to the Penal Code, unless otherwise noted.

II. FACTUAL AND PROCEDURAL BACKGROUND

On July 18, 2010, at about 5:30 p.m., three officers of the Clearlake Police Department responded to a call from the Lakeland Mobile Home Park regarding a violation of a restraining order by appellant. The officers—specifically Officers Ramirez, Lenz, and Carpenter—were familiar with appellant and, more specifically, the restraining order against him, which required that he stay 100 yards away from a resident of that mobile home park, Kevin Streef. Indeed, Officer Ramirez had arrested appellant earlier that same day for violating the same restraining order.

After confirming that appellant had, indeed, returned to the mobile home park and was again calling Streef names, the officers went to the trailer where appellant had last been seen to arrest him.

The officers knocked on the front door of the trailer, but the occupants, which clearly included appellant because they could hear his voice inside, refused to open the door. A woman occupant, Christine Omoa, did so only after Officer Ramirez threatened to send a canine into the trailer. When the door was opened, the officers could see appellant inside; he attempted to run into another room in the trailer, but Officer Lenz ran inside and grabbed appellant by one of his arms. Appellant immediately responded by saying: “Don’t fucking touch me,” pulled away from Lenz’s grasp, and said: “Fuck you.”

Officer Lenz then tried to restrain appellant by, first, grabbing his left arm and trying to get both arms behind his back. But appellant refused to comply with the officers’ demand, so they brought him to the floor of the trailer to try to get control of him. Following a struggle, they managed to handcuff appellant, but he still continued to be combative and resistant to arrest.

The officers then tried to get appellant into their patrol car, but he refused to walk, and so had to be carried there. Once there, Officer Lenz had to force appellant into the back seat and place a seat belt on him; appellant resisted all this, yelled repeatedly at Lenz, and threatened to head butt him. He also began kicking the side window of the back of the patrol car and succeeded in knocking that window out of the doorframe.

The officers determined that they would have to place leg restraints on appellant, but appellant resisted that effort, and refused to lift his legs, pulled them away from the officers, and continued using them to kick at them. Officer Lenz then leaned into the car to attempt to place the restraints on appellant's legs, but appellant kicked Lenz on the right side of his head, causing Lenz's head to hit the door of the car. Lenz suffered a laceration to his face and was bleeding from it.

The officers then managed to pull appellant out of the patrol car so all of them, and not just Lenz, could attempt to control him. But appellant continued to resist the efforts to put the leg restraints on him by thrashing around. The officers were finally able to get the leg restraints on appellant and placed him into the patrol car and took him to police headquarters and jail.

By an information filed on January 7, 2011,² appellant was charged with six counts, including: battery upon an officer resulting in injury (§ 243, subd. (c)(2)), obstructing an officer in the performance of his duties (§ 69); defacing property with graffiti (§ 594); contempt of court by disobeying a restraining order (§ 166, subd. (a)(4)) (two counts); and resisting a peace officer in the performance of his duties (§ 148, subd. (a)(1)). As noted above, the information also alleged that appellant had, in 2007, been convicted of a prior serious or violent felony and had been sentenced to a prior prison term. (§§ 1170.12, subd. (a)-(d), 667, subd. (b)-(i), & 667.5, subd. (b).)

On March 7, appellant pled no contest to the first count of the information and admitted both the strike and prior prison term allegations.

On May 31, appellant filed a motion under section 1385 to strike the allegation of his 2007 felony conviction in the interests of justice. The prosecution filed an opposition to that motion.

On June 7, the court ordered a diagnostic evaluation of appellant to be undertaken by the Department of Corrections (CDC) pursuant to section 1203.03. Trial defense

² All further dates noted are in 2011.

counsel expressly agreed that such a report should be sought. That report was filed with the court on or about August 24.

On September 12, the trial court denied appellant's section 1385 motion, denied him probation, and sentenced him to a total of five years in state prison.

Appellant filed a timely notice of appeal three days later.

III. DISCUSSION

Our standard of review of a matter such as this is, clearly, abuse of discretion. Our Supreme Court made this clear in its most recent decision on this subject (a decision which, rather curiously, is not referenced in either of appellant's briefs to us), *People v. Carmony* (2004) 33 Cal.4th 367 (*Carmony*).

In *Carmony*, the court first noted some of its earlier decisions which "implied" that abuse of discretion was the proper standard of review of a denial of a section 1385 motion to strike an allegation of a prior conviction, and then cited numerous Court of Appeal decisions so holding. It then stated: "Like our Courts of Appeal, we follow our own lead and hold that a trial court's refusal or failure to dismiss or strike a prior conviction allegation under section 1385 is subject to review for abuse of discretion. We reach this holding not only because of the overwhelming case law, but also as a matter of logic. 'Discretion is the power to make the decision, one way or the other.' [Citation.] We have previously concluded that a court's decision to strike a qualifying prior conviction is discretionary. [Citation.] As such, a court's decision *not to* strike a prior necessarily requires some exercise of discretion. Because these two decisions are flip sides of the same coin, we see no reasoned basis for applying a different standard of review to a court's decision not to strike." (*Carmony, supra*, 33 Cal.4th at p. 375.)

The *Carmony* court then went on to explain why, in the case before it, there was no abuse of discretion. It stated: "In reviewing for abuse of discretion, we are guided by two fundamental precepts. First, ' "[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence

will not be set aside on review.” ’ [Citations.] Second, a ‘ “decision will not be reversed merely because reasonable people might disagree. ‘An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.’ ” ’ [Citations.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.

“Because ‘all discretionary authority is contextual’ [citation], we cannot determine whether a trial court has acted irrationally or arbitrarily in refusing to strike a prior conviction allegation without considering the legal principles and policies that should have guided the court’s actions. We therefore begin by examining the three strikes law.

“ ‘[T]he Three Strikes initiative, as well as the legislative act embodying its terms, was intended to restrict courts’ discretion in sentencing repeat offenders.’ [Citation.] To achieve this end, ‘the Three Strikes law 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.” ’ [Citation.]

“Consistent with the language of and the legislative intent behind the three strikes law, we have established stringent standards that sentencing courts must follow in order to find such an exception. ‘[I]n ruling whether to strike or vacate a prior serious and/or violent felony conviction allegation or finding under the Three Strikes law, on its own motion, “in furtherance of justice” pursuant to Penal Code section 1385(a), or in reviewing such a ruling, 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.’ [Citation.]

“Thus, the three strikes law not only establishes a sentencing norm, it carefully circumscribes the trial court’s power to depart from this norm and requires the court to explicitly justify its decision to do so. In doing so, the law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper.

“In light of this presumption, a trial court will only abuse its discretion in failing to strike a prior felony conviction allegation in limited circumstances. For example, an abuse of discretion occurs where the trial court was not ‘aware of its discretion’ to dismiss [citation], or where the court considered impermissible factors in declining to dismiss [citation]. Moreover, ‘the sentencing norms [established by the Three Strikes law may, as a matter of law,] produce[] an “arbitrary, capricious or patently absurd” result’ under the specific facts of a particular case. [Citation.]

“But ‘ [i]t is not enough to show that reasonable people might disagree about whether to strike one or more’ prior conviction allegations. [Citation.] Where the record is silent [citation], or ‘[w]here the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court’s ruling, even if we might have ruled differently in the first instance’ [citation]. Because the circumstances must be ‘extraordinary . . . by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he squarely falls once he commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack’ [citation], the circumstances where no reasonable people could disagree that the criminal falls outside the spirit of the three strikes scheme must be even more extraordinary. Of course, in such an extraordinary case—where the relevant factors described in *Williams, supra*, 17 Cal.4th 148, manifestly support the striking of a prior conviction and no reasonable minds could differ—the failure to strike would constitute an abuse of discretion.” (*Carmony, supra*, 33 Cal.4th at pp. 376-378; see also *In re Large* (2007) 41 Cal.4th 538, 550-551; *People v. Leavel* (2012) 203 Cal.App.4th 823, 836-837; *People v. Carrasco* (2008) 163 Cal.App.4th 978, 992-994; *People v. Lee* (2008) 161 Cal.App.4th 124, 127-132.)

In this case, the trial court clearly applied the abuse of discretion standard properly. It stated, in denying appellant's *Romero* motion, that "given his what I believe to be a fairly lengthy history, including at least two prior felony convictions, I believe that this defendant is someone who comes within the spirit of the Strike's sentencing provisions. I think it's appropriate to apply them. And I will deny the *Romero* motion."

In accordance with *Carmony* and the similar authority cited above, the trial court clearly did not abuse its discretion.

First of all, appellant had a long criminal record dating back to 1993. It included: (1) grand theft from a person (§ 487.2), for which appellant was sentenced to 60 days in jail and then granted probation, which was thereafter revoked; (2) numerous parole violations in the period from 1995 to 2002; (3) trespass and tampering with a vehicle (§ 601, subd. (a)(1) and Veh. Code, § 10852); (4) evading a peace officer and hit and run resulting in an injury (Veh. Code, §§ 2800.2; 20001); (5) driving on a suspended license (Veh. Code, § 14601.1); (6) welfare fraud and perjury (Welf. & Inst. Code, § 10980, subd. (c); § 118); (7) battery (§ 243, subd. (e)(1)); (8) grand theft of a firearm, petty theft with a prior, and being a felon in possession of a firearm (§ 487, subd. (d), § 666; § 12021, subd. (a)(1));³ (9) unauthorized entry into a dwelling (§ 602.5, subd. (a)); (10) fighting (§ 415.1); and (11) failure to appear in court (§ 1320). The probation report also noted that, in 1997, appellant was shot five times during a "drug war."

Second, the current offense involved significant violence, including twice coming close to the victim's residence and yelling at him, and then—clearly more importantly—swearing at the police who had come to arrest him, fighting with two of them, kicking out a window in the patrol car, refusal to put on leg restraints, and then kicking and injuring Officer Lenz as the latter was trying to affix those restraints.

Third, the diagnostic study of appellant made by the CDC was decidedly negative regarding appellant. It stated, among other things, that "[o]verall . . . Mr. Crockett was elusive and inconsistent with his reported history during the interview and when

³ This was the felony conviction appellant requested be stricken under *Romero*.

administered the PCL-R-2. . . . Mr. Crockett appeared to be most inconsistent with regard to his reported substance abuse, employment, and mental health history. . . . [¶] Mr. Crockett evidenced poor insight. He reported that he did not ‘know why’ he had been singled out by his neighbor and felt that he was being persecuted. . . . Mr. Crockett also reported that he feels he is being ‘wrongfully punished’ because he does not remember hurting the officer. . . . [¶] Overall, Mr. Crockett was inconsistent with regard to his reported history in the interview with this evaluator, answers to test items, and previous reported history as outlined in court records and previous mental health records. What is known, is that Mr. Crockett is [a] man who has a lengthy criminal history beginning in adolescence and positive for two previous prison convictions including Grand Larceny and a Firearms charge. Additionally, he reported a ‘lifestyle’ positive for substance abuse, criminality, and [a] general parasitic approach to life including residing with and accepting money from his mother, and later relying on the government for Social Security Income benefits for medical and mental health problems. . . . Additionally, it should be noted that Mr. Crockett reported that he was able to maintain ‘steady’ employment for three years between 1995 and 1998 while allegedly experiencing such detrimental systems as to warrant the need for SSI. Mr. Crockett reported that he first applied for SSI in 2004, after receiving treatment for mental health problems for approximately a year. He reported that he was awarded SSI in 2006 which allowed him to stop requiring money from his mother for survival. Given the results of testing completed for this evaluation, it is possible that he feigned mental health symptoms in order to assist with his application for SSI. . . . [¶] Concerns [i.e., regarding ‘readiness for release’] are that Mr. Crockett is an uneducated man with a lengthy criminal history and propensity for violent acting out.”

As noted above, the trial court had received and reviewed the August 24 CDC report before the September 12 sentencing hearing. Neither party objected to it—along with a similarly negative probation report—being received into evidence.

In his briefs to this court, appellant’s only specific argument as to why the trial court abused its discretion by not striking his 2007 conviction under section 487,

subdivision (d), for grand theft of a firearm is that “the trial court here refused to consider whether appellant was receiving Social Security Disability benefits, stating, ‘Well, for the record, I am not considering the fact whether anybody was ever on SSI. It is irrelevant to the sentencing hearing.’ . . . In finding that the Social Security Disability benefits were ‘irrelevant,’ the trial court not only failed to exercise its ‘informed discretion,’ but also [sic] denied appellant of his due process rights guaranteed by the state and federal Constitutions to have the court exercise informed sentencing discretion [citations].

This same argument regarding the trial court’s refusal to hear argument about appellant’s SSI benefits is repeated in appellant’s reply brief; indeed, it is the only argument made there.

An examination of the trial court record makes clear that this argument is without merit. Yes, the trial court *did* state that it was “not considering the fact whether anybody was ever on SSI. It is irrelevant to the sentencing hearing.” But what appellant’s briefs ignore is the fact that the trial court made this comment *in the course of agreeing with arguments being made by appellant’s trial counsel* that the report of the CDC unfairly singled out appellant for improperly applying for and receiving SSI benefits. Thus, in his argument to the trial court on the *Romero* motion, appellant’s trial counsel vigorously attacked the tenor and thrust of the CDC report.

Specifically, he argued: “I’m a little offended by the psychologist report. I’ve gotten a lot of them. I’ve never seen one—this is about two to three times the length of the usual report I get, and it seems to me there’s—there’s a lot of irrelevant material here, a lot of—it just comes off as a little malicious. You know, some of the terms that are used to describe the defendant regarding his having SSI, regarding his living with his mother and so on. I just feel that they’re a little unprofessional and uncalled for and reflects bias and you know, some kind of alter [sic] conservative bias that the writer has against people on welfare, against people on SSI, so on and so forth. But I just note that, you know, maybe 20 percent of our country is similarly situated. So I just thought that that was—that was inappropriate. [¶] He’s entitled to his political beliefs and social prejudices, but I really thought that he really went overboard and taking this out on the

defendant. He said there's no evidence of him ever having a mental illness. Well, he got SSI; so obviously somebody thought he did. And he takes minor discrepancies about certain things that in—in the ordinary course of things one would attribute to the forgetfulness, or whatever. And it just seemed like he really, you know, wanted to set the defendant up. It's one thing for him to say, you know, he's got a criminal record, and he's got this, and he's got that, and he's not appropriate for probation. But I really think this was a character assassination on my client.”

At this point, the trial court interrupted appellant's trial counsel and stated, as noted above: “Well, for the record, I'm not considering the fact whether anybody was ever on SSI. It's irrelevant to the sentencing hearing.”

As noted above, by this statement the trial court was making clear its agreement *with the argument being made by appellant's trial counsel* by stating that it was not going to endorse the CDC negative use of appellant's application for and receipt of Social Security payments in making its decisions either regarding (a) his *Romero* motion or (b) the issue of probation. Nonetheless, in his briefs to us, appellant seizes upon the trial court's statement that his receipt of SSI payments was “irrelevant” to the selection of the sentence to argue that the trial court failed to exercise informed discretion. In the context of his objection to the tone of the psychologist's sentencing report, trial counsel argued that the SSI payments were based on a diagnosis of mental illness relevant to the sentencing decision. However, the evidence of the basis of the SSI diagnosis are statements by appellant included in the psychologist's report, which was reviewed by the trial court; no other offers of evidence were made. Moreover, the report refers to prior prison evaluations, as well as to a jailhouse evaluation of appellant conducted shortly before trial. These facts were part of the psychologist's evaluation and ultimate conclusion that appellant was not mentally ill at the time of sentencing and hence that it was “unlikely” that he “will be successful on probation.” That extended (11-page) report discussed appellant's alleged mental ills thoroughly and concluded that appellant's “mental health symptoms are vague and include ‘voices’ which he did not quantify or qualify. His reported onset of these ‘voices’ vacillated between 1992 when he was shot,

and 2002 when he reported that he first sought ‘help’ for them. It should be highlighted that Mr. Crockett had been routinely screened for mental health problems no less than seven times between 1995 and 2002 and it was determined that he did not need a mental health evaluation or further treatment Given the results of testing completed for this evaluation, it is possible that he feigned mental health symptoms in order to assist with his application for SSI.”

The trial court had the psychologist’s entire report before it, and was entitled to—and obviously did—rely upon its conclusion that appellant was not actually suffering from mental illness. It did not, therefore, fail to exercise its discretion properly regarding appellant’s mental condition at the time of sentencing.

In any event, and particularly in view of appellant’s lengthy criminal history, we find no abuse of discretion in the trial court’s denial of his section 1385 motion.

IV. DISPOSITION

The judgment, including the sentence imposed, is affirmed.

Haerle, J.

We concur:

Kline, P.J.

Lambden, J.