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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.

LUIS RICARDO McLAUGHLIN,

Defendant and Appellant.

A140513

(Alameda County
Super. Ct. No. CH51648, CH513615)

After admitting that he had suffered a prior felony conviction, a jury convicted defendant Luis Ricardo McLaughlin of being a felon in possession of a firearm (Pen. Code,¹ § 29800, subd. (a)(1)), carrying a concealed weapon on his person (§ 25400, subd. (a)(2), and carrying a loaded firearm on his person (§ 25850, subd. (a).) Defendant waived his right to a jury trial regarding the allegations that he had suffered four prior felony convictions, one of which was a second-strike prior under the Three Strikes Law (§ 1170.12, subd. (c)(1)), and served three prior prison terms (§ 667.5). Inasmuch as defendant had previously admitted a prior felony conviction, the trial court found true the remaining three prior felony convictions allegations, as well as the three prior prison term allegations. The court denied defendant's motion to dismiss his prior strike conviction (*People v. Superior Court (Romero)* 13 Cal.4th 497 (*Romero*)) and sentenced him to seven years in state prison. We affirm.

¹ All further undesignated statutory references are to the Penal Code.

BACKGROUND

A. *Underlying Offenses*

In the afternoon of October 17, 2012, Fremont Police Officer Darryl Manrique and Sergeant Tom Severance saw defendant and three to four other people standing in the driveway of a known probationer's house. In preparing to search the house, Officer Manrique raised his hand and told the people "not to move." Defendant started "backing" away, and then "turned and ran." Officer Manrique chased after defendant, but lost sight of him as defendant ran into the backyard. Once he reached the backyard, Officer Manrique saw defendant standing on the edge of a deck facing the side yard fence. Officer Manrique ran up the stairs to the deck and chased defendant into the side yard. As he continued to run from the officer, defendant reached towards his front waistband area. Officer Manrique took out his Taser. As defendant jumped onto the fence, Officer Manrique simultaneously activated his Taser. Defendant "tensed up" and fell off the fence. When Sergeant Severance reached the side yard, he covered Officer Manrique so that he could safely handcuff defendant. Defendant appeared to be under the influence of methamphetamine.

While walking defendant out of the side yard, Officer Manrique saw a small semi-automatic handgun laying on the ground between the deck and fence. The gun had bullets in its magazine and one "live bullet" in its barrel. Defendant's left thumbprint was found on the gun's magazine.

B. *Romero Motion*

In his motion to dismiss his prior strike conviction for robbery, defendant argued that his current offense and prior offenses, other than his robbery conviction, were not particularly serious, noting that "no one was injured." He characterized his prior nonstrike offenses as "vehicle and theft offenses." He advised the court that he had two young children and that upon his eventual release from custody, he wants to be the best father he can be. Although he had suffered from methamphetamine addiction since the time he was 19 years old, defendant emphasized that his prospects for rehabilitation were promising, given that he comes from a stable family, and at then 30 years old, he was "at

an age where many transition to maturity.” He also had a job at an alcohol distillery waiting for him upon his release from custody. The defense believed that a five-year sentence “would be a significant and appropriate sentence in this case,” which “by no means [is] a ‘lenient’ sentence,” but one that would give defendant “hope for a better life and a reason to rehabilitate himself.”

In a letter to the probation department,² the prosecutor argued that the manner in which defendant carried out the current offense indicated planning, sophistication, or professionalism. Specifically, once he knew the pursuing officer had lost sight of him, he got rid of the gun that was in his possession. He also concealed the weapon in such a way that prevented its initial detection. After he was apprehended, the gun was found on the ground in defendant’s flight path. Defendant’s prior felony convictions progressed from a second degree burglary in 2004, to a strong-arm robbery in 2006, to recklessly evading police in 2008, to the instant 2012 offense in which he armed himself with a loaded weapon. Additionally, at the time he committed the instant offense, defendant was on parole *and* on felony probation for a car theft offense.

According to the probation report, prior to the present felony convictions, defendant had been convicted of five other felonies: 1) burglary in 2005; 2) robbery in 2006; 3) evading an officer in 2008; 4) petty theft with a prior in 2010; and 5) vehicle theft in 2012. He also had seven misdemeanor convictions between 2003 and 2009. Defendant had been granted probation seven times. His probation was revoked 22 times in Alameda County. He also suffered 10 parole violations. The probation report also noted that defendant had been in the United States Air Force from 2000 to 2002. He was dishonorably discharged for drug-related criminal conduct.

In denying the motion, the trial court found no factors in mitigation. It did find, however, several factors in aggravation, including that the manner of the current offense demonstrated a degree of sophistication and criminal experience. The court noted defendant’s “knowledge that he should run, his knowledge that he should ditch the gun.

² It appears that this letter served as the People’s opposition to the *Romero* motion, and as the basis for the People’s recommendation for sentencing.

The sophistication is also knowing . . . you should ditch the gun out of sight, being able to carry the concealed weapon in the way it didn't show, and carrying it loaded." The court further noted that defendant's prior convictions were "numerous and of increasing seriousness; that the defendant was on both probation and parole at the time of this offense and has proved to be a failure on both on multiple occasions"

DISCUSSION

Defendant argues that the trial court abused its discretion by not striking his prior felony conviction for sentencing purposes under section 1385 and *Romero, supra*, 13 Cal.4th 497. We disagree.

A trial court may, on its own motion and "in furtherance of justice," dismiss a finding that a defendant has previously been convicted of a strike. (§ 1385, subd. (a); *People v. Carmony* (2004) 33 Cal.4th 367, 373; *Romero, supra*, 13 Cal.4th at pp. 529-530.) "[I]n ruling whether to [do so] . . . , 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 [Three Strikes law]'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." (*People v. Williams* (1998) 17 Cal.4th 148, 161.)

"The striking of a prior serious felony conviction is not a routine matter. It is an extraordinary exercise of discretion, and is very much like setting aside a judgment of conviction after trial." [Citation.]" (*People v. McGlothin* (1998) 67 Cal.App.4th 468, 474.) It is a conclusion "that an exception to the [sentencing] 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." (*Ibid.*)

We review for an abuse of discretion the determination whether to dismiss a strike under section 1385. (*People v. Carmony, supra*, 33 Cal.4th at p. 374.) The Three Strikes law, which is "intended to restrict courts' discretion in sentencing repeat offenders[,] . . . [¶] . . . [¶] . . . creates a strong presumption that any sentence that conforms to [its]

sentencing norms is both rational and proper.” (*Id.* at pp. 377-378.) As a result, “a trial court will only abuse its discretion in failing to strike a prior felony conviction . . . in limited circumstances,” such as where it did not realize it had discretion to do so, where it “considered impermissible factors in declining to dismiss” the conviction, or where “the sentencing norms [of the Three Strikes law] produce[] an “arbitrary, capricious[,] or patently absurd” result’ under the specific facts of a particular case.” (*Id.* at p. 378.)

Defendant does not claim that the trial court misunderstood the scope of its discretion or considered improper factors. Instead, he argues that he falls “outside the ‘spirit’ of the ‘Three Strikes’ law” because the court failed to give adequate consideration to his individualized factors. According to defendant, the factors in his case demonstrate “the remoteness of his prior conviction, the generally non-violent nature of his past and current offenses, . . . and his background, character, and prospects.”

We reject defendant’s contention that his conduct does not fall within the spirit of the Three Strikes law because his past and current offenses were “generally non-violent.” In the current offense, defendant, who appeared to be under the influence of methamphetamine, was armed with a concealed, loaded weapon, and led police on a foot chase in a residential area, which ended with police needing to deploy a Taser to physically subdue him. That the current offense ended without any actual violence does not diminish the potential for violence inherent in defendant’s conduct. As to defendant’s prior offenses, the record fails to include any information regarding the factual circumstances of the offenses. In any event, defendant’s 2006 robbery conviction unquestionably involved actual violence.

We similarly reject defendant’s contention that his 2006 robbery conviction is remote in time. The instant offenses occurred in 2012. Six years is not a significant time to demonstrate rehabilitation, especially when during this period defendant was convicted of three felonies and two misdemeanors.

While defendant’s desire to be the best father he can be to his two young children is admirable, the record reflects that he has been unable to be a law abiding citizen, despite the many opportunities he has been given. The promise of employment upon his

release from custody, although signaling some effort at rehabilitation, is unfortunately too little and too late to demonstrate his ability to conform his behavior to the law.

Importantly, he has failed to bring his methamphetamine addiction under control. A life of crime cannot be justified or excused by drug use, even if, as defendant suggests, his drug addiction was exacerbated during his time in the military; the failure to “follow through in efforts to bring his substance abuse problem under control” is not a mitigating circumstance justifying a decision to strike a strike. (*People v. Williams, supra*, 17 Cal.4th at p. 163.)

Defendant, who was 30 years old at the time of sentencing, claims he is at an age “where many transition to maturity.” However, even disregarding defendant’s criminal history and claim of past immaturity, the facts of the current offenses demonstrate that defendant is still unable to conform his behavior to the law. Given the “ ‘ particulars of his background, character, and prospects’ ” (*People v. Carmony, supra*, 33 Cal.4th at p. 377), the trial court did not abuse its discretion in denying defendant’s *Romero* motion or in sentencing defendant to an aggregate sentence of seven years in state prison.

DISPOSITION

The judgment is affirmed.

REARDON, J.

We concur:

RUVOLO, P. J.

RIVERA, J.