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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

RICKIE JAMES CROUCH,

Defendant and Appellant.

B227537

(Los Angeles County
Super. Ct. No. BA367310)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael M. Johnson, Judge. Affirmed.

Sarah A. Stockwell, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General; Dane R. Gillette, Chief Assistant Attorney General; Lance E. Winters, Senior Assistant Attorney General; James William Bilderback II and J. Michael Lehmann, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted defendant Rickie J. Crouch of first degree burglary. (See Pen. Code, § 459.) In a bifurcated hearing, the trial court found that Crouch had suffered a prior “strike” conviction within the meaning of the Three Strikes law (§§ 667, subds. (d) & (e)(1), 1170.12, subds. (b) & (c)(1).) Crouch filed a motion to dismiss the strike pursuant to Penal Code section 1385, subdivision (a). The court denied the motion and sentenced Crouch to 13 years in prison. On appeal, Crouch contends the trial court abused its discretion in refusing to dismiss his prior “strike.” We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Amended Information

In an amended information, defendant Rickie James Crouch was charged with first degree burglary of a residence. (See Pen. Code, §§ 459, 460, subd. (a).)¹ The information included a special allegation asserting that the offense qualified as a “violent felony” under section 667.5, subdivision (c)(21) because a non-accomplice was present during the burglary. The information also alleged that Crouch had one prior serious or violent felony conviction within the meaning of the Three Strikes law (§§ 667, subds. (b)-(i); 1170.12, subds. (a)-(d)), one prior serious felony within the meaning of section 667, subdivision (a)(1) and nine prior convictions for which he had served a prison term. (§ 667.5, subd. (b).) Crouch pleaded not guilty.

B. Trial Testimony

1. The prosecution’s witnesses

a. Testimony of Colin Heinrich

Colin Heinrich testified that he and his five roommates, who were all members of the USC swim team, lived in an off-campus residence located at 1150 West 30th Street. At approximately 9:00 a.m. on January 25, 2010, Heinrich was in his bedroom when he noticed that his internet had stopped functioning. Heinrich went to the living room to check the wireless modem. When Heinrich entered the room, he saw the defendant,

¹ Unless otherwise noted, all further statutory citations are to the Penal Code.

Rickie Crouch, “hunched over” a shelf that contained various electronics. Crouch immediately stood up and Heinrich ordered him to leave the house. Crouch told Heinrich that he was looking for “recyclables” and asked if he could take “some random bits of trash, random recyclables” that were on the floor. Heinrich wanted Crouch to leave the premises so he gave him permission to take the items. Crouch picked up an empty champagne bottle and exited the house.

After Crouch left, Heinrich noticed that an Xbox 360 game system and a wireless modem had been removed from a shelf beneath the television and placed on the floor with their wires “curled up around them.” He also saw a Nintendo Wii “on a chair with its wires.” Heinrich stated that the last time he was in the living room – which was 11:00 p.m. the prior night – the Xbox and modem had been sitting on a shelf and were plugged into the electrical socket.

Heinrich went to the back of his house and saw that campus safety officers had detained Crouch. The officers approached Heinrich and asked him if he could identify two items: a gray USC swim team sweatshirt and a four pack of Red Bull energy drinks. Heinrich recognized the sweatshirt as the 2008-2009 USC swim team sweatshirt. Although Heinrich could not confirm “who in the house it belonged to,” he knew it belonged to someone on the swim team. Heinrich also knew there had been a four pack of Red Bull in his refrigerator. After speaking with the officers, Heinrich checked the refrigerator and could not find the four pack of Red Bull.

b. Testimony of USC public safety officers

USC public safety officer Bradley Thornton testified that he worked in a communications center that was used to monitor off-campus residences located near the university. On the morning of January 25, 2010, Thornton was watching images from a surveillance camera positioned in the alleyway behind 1150 West 30th Street. Thornton noticed a man rummaging through garbage cans. The man went down the driveway of 1150 West 30th and then re-emerged with a black bag, which he placed in a van. Thornton immediately contacted campus safety officers and requested that they investigate the matter. Thornton then saw the suspect re-enter the driveway leading to

1150 West 30th. Shortly thereafter, Thornton saw the field officers arrive and detain the suspect.

Public safety officers Priscilla Quezada and Ralph Roseli testified that they found Crouch near 1150 30th Street and that Roseli had seen the suspect exit the residence. The officers conducted a search of Crouch's van and found a gray USC swim team sweatshirt, a black bag filled with recyclables and a four pack of cold Red Bull cans. When Roseli entered the living room of the residence, he saw a video game console, several rolled up power cords and various other electronics stacked on a chair in the living room.

2. The defense's witness

Crouch was the only witness who testified in his defense. Crouch stated that he woke up in his van on the morning of January 25 and had to use a bathroom. Crouch did not want to urinate in the alleyway and saw that the door to 1150 West 30th was "wide open." Crouch knocked on the door, entered the residence and then went into the bathroom. When Crouch came out of the bathroom, he noticed "a lot of trash all over the place and bottles and cans." Crouch decided to collect some of the recyclable items and also took "a sweatshirt and some Red Bull." Crouch stated that he took the sweatshirt because it looked "old and worn out" and he thought "maybe they didn't want it or something." Crouch also said he "wasn't in [his] right state of mind" when he entered the residence because he had not been taking his medication. According to Crouch, he normally took medication that helped him "control [his] thoughts" and "think clearly."

Crouch further testified that after gathering the recyclables and the other items, he went out to his van to check on his puppy. Crouch then returned to the house to "get permission to clean up . . . and get the rest of the recyclables . . . the things they didn't want." Crouch alleged that he knocked on the door and "hollered" before reentering the house. As Crouch reentered, Colin Heinrich came out of his room and the two men had a "very calm and friendly conversation." Crouch said that Heinrich initially believed that Crouch was a "housekeeper" and gave him permission to remove the recyclables.

During cross-examination, Crouch denied touching any of the electronics in the house and denied taking a four pack of Red Bull. Crouch also admitted that he had been convicted of felonies in 2000, 2001, 2007 and 2009.

C. Conviction and Sentencing

On July 15, 2010, the jury convicted Crouch of first degree burglary and found that a non-accomplice was present in the residence during the commission of the offense. At a subsequent hearing, the trial court found that Crouch had been convicted of first degree residential burglary in May of 1983, which qualified as both a “strike” and a serious prior felony. The court also found that Crouch had five prior felony convictions that had resulted in prison sentences.

Crouch filed a sentencing memorandum arguing that the court should dismiss his prior “strike” conviction pursuant to section 1385, subdivision (a) because: (1) his current conviction would result in a lengthy prison sentence; (2) he had never been convicted of a crime that involved “actual violence”; (3) many of his prior convictions were the result of a substance abuse problem; (4) he suffered from a mental condition that significantly reduced his culpability; (5) he had committed the present offense to provide the necessities of life, and; (6) in committing the present offense, he had not harmed any victims or taken anything of value. The district attorney opposed the motion to strike, arguing that the offense had been “properly charged.”

At the sentencing hearing, the trial court denied “the motion to eliminate the strike,” explaining: “Certainly I understand that the strike was in May 1983 which was many years ago, but on the other hand, there are many factors which support the strike. The intervening years involved many, many criminal convictions. The Defendant’s record in the probation report requires two-and-a-half pages in the probation recitation. By my count, since his 1983 strike, he has had eleven felony convictions, including the present, and eleven misdemeanor convictions and among the felonies are what I would consider to be significant crimes: narcotic sales, forgery, escape, and second degree burglary. [¶] Another factor is that the May 1983 strike and the present crime were the same crime, first degree burglary. [¶] Another factor is that the defendant was on parole

when this crime was committed. So when I look at all the circumstances, I think this is precisely the kind of record in which the strikes law was intended to address.”

The trial court sentenced Crouch to an aggregate sentence of 13 years in prison. The court selected the mid base-term of four years, which was doubled to eight years “because of [Crouch’s] strike conviction.” The court also added a five-year prison term because Crouch’s 1983 conviction constituted a serious prior felony under section 667, subdivision (a). The court elected to “strike and dismiss in the interests of justice the 667.5(b) prison priors” Crouch filed a timely appeal.²

DISCUSSION

On appeal, Crouch argues that the trial court abused its discretion when it refused to dismiss his prior Three Strikes conviction pursuant to section 1385, subdivision (a).

A. Applicable Legal Principles and Standard of Review

Penal Code section 1385, subdivision (a) vests the trial court with discretion to dismiss a prior conviction, including a qualifying strike conviction, “in furtherance of justice.” (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 530; *People v. Williams* (1998) 17 Cal.4th 148, 158 (*Williams*).) When determining whether to “strike a strike” (*People v. Williams* (1998) 61 Cal.App.4th 649, 659, fn. 7), 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.” (*Williams, supra*, 17 Cal.4th at p. 161.) The court must, however, remain “mindful of the sentencing scheme within

² In addition to his appeal, Crouch has filed a petition for habeas corpus arguing that we should dismiss his 1983 burglary conviction because he pleaded guilty to that offense without being advised of his constitutional rights or the consequences that would result from his conviction. The petition was filed directly in this court. On July 21, 2011, we entered an order stating that the petition would be considered with Crouch’s appeal. By order filed this day, we deny the petition.

which it exercises its authority.” (*People v. McGlothlin* (1998) 67 Cal.App.4th 468, 474.) Only by virtue of “extraordinary . . . circumstance[s]” may a career criminal be deemed to fall outside the spirit of the Three Strikes sentencing scheme. (*People v. Strong* (2001) 87 Cal.App.4th 328, 338.)

We review the denial of a section 1385 motion under the deferential abuse of discretion standard. (*People v. Carmony* (2004) 33 Cal.4th 367, 374.) “‘The burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.]’” (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977.) “‘It is not enough to show that reasonable people might disagree about whether to strike one or more of his prior convictions. Where the record demonstrates that the trial court . . . 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.’ [Citations.]” (*People v. Zichwic* (2001) 94 Cal.App.4th 944, 961.) In conducting our review, we presume the trial court considered all of the relevant factors even if the record does not affirmatively demonstrate that all of the factors were considered. (*People v. Myers* (1999) 69 Cal.App.4th 305, 310.)

B. The Trial Court Did Not Abuse its Discretion

In explaining the basis for its ruling, the trial court demonstrated it understood the scope of its discretion. Although the court recognized that Crouch committed his prior strike over 25 years ago, it concluded that other factors demonstrated that Crouch still fell within the spirit of the Three Strikes law. Specifically, the court noted that: (1) since 1983, Crouch has been convicted of approximately two dozen offenses, including several felonies; (2) the crime he committed in 1983 was identical to the present offense, and (3) the current offense was committed while Crouch was on parole for a prior felony.

The trial court did not act irrationally or arbitrarily in concluding that Crouch did not fall outside the spirit of the Three Strikes scheme merely because his strike conviction was remote in time. As summarized by the trial court, Crouch’s probation report indicates that “there has literally been no period that has gone by where he has remained free of crime.” Since his 1983 burglary conviction, Crouch has suffered almost two

dozen separate convictions. His offenses include receiving stolen property, burglary, possession of narcotics for sale, battery, escape, forgery and several vehicular offenses. Crouch admitted at trial that he was convicted of felonies in 2000, 2001, 2007 and 2009. Crouch also committed the current offense while on parole. Because the record demonstrates the “defendant has led a continuous life of crime . . . there is simply nothing mitigating about the [remoteness of his first strike.]” (*People v. Humphrey* (1997) 58 Cal.App.4th 809, 817.)

Moreover, although Crouch characterizes his current offense as “miniscule,” the jury found that he burglarized a dwelling while a non-accomplice was present in the residence. The Legislature has specifically classified such conduct as a “violent” felony. (§ 667.5, subd. (c)(21).) California’s burglary laws are intended to address “the dangers to personal safety created by the usual burglary situation -- the danger that the intruder will harm the occupants in attempting to perpetrate the intended crime or to escape and the danger that the occupants will in anger or panic react violently to the invasion, thereby inviting more violence. The laws are primarily designed . . . to forestall the germination of a situation dangerous to personal safety.’ [Citation.]” (*People v. Gauze* (1975) 15 Cal.3d 709, 715.) Although there is no evidence indicating that Crouch intended to harm the inhabitants of the residence, he admitted that he knew someone was inside the dwelling at the time he decided to enter. Such conduct greatly increased the likelihood that a “crime[] involving personal injury [would] ensue” (*People v. Lewis* (1969) 274 Cal.App.2d 912, 919.)

In light of Crouch’s extensive criminal history and the serious nature of his present offense, we find no basis for concluding that the trial court abused its discretion in concluding that Crouch did not fall outside the spirit of the Three Strikes sentencing scheme.

DISPOSITION

The trial court's judgment of conviction is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.