

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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

THE PEOPLE,

Plaintiff and Respondent,

v.

DYLAN A. ENDERS,

Defendant and Appellant.

B231277

(Los Angeles County
Super. Ct. No. LA059653)

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

Tara K. Hoveland, 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, Assistant Attorney General, Kenneth C. Byrne and Dana M.
Ali, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Dylan A. Enders appeals from the judgment entered following his no contest plea to one count of committing a lewd act upon a child under the age of 14. (Pen. Code, § 288, subd. (a).)¹ His sole contention is that the trial court abused its discretion in denying his motion to dismiss a prior serious felony conviction pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*). We disagree and affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

Defendant was charged with kidnapping to commit a sexual act, aggravated sexual assault of a child, and committing a lewd act upon a child. (§§ 209, subd. (b)(1), 269, subd. (a)(5), 288, subd. (a).) In addition, it was alleged that he had suffered a prior serious felony conviction within the meaning of section 667, subdivision (a) and the “Three Strikes” law, sections 667, subdivisions (b) through (i) and 1170.12, subdivisions (a) through (d).

On March 8, 2010, a court trial commenced. On March 10, in the middle of trial, the parties informed the court that they had reached a disposition. Defendant pled no contest to violating section 288, subdivision (a) and admitted that he had suffered a prior serious felony conviction. The parties agreed that defendant would be sentenced to no less than 11 years and no more than 21. Defendant reserved the right to pursue a *Romero* motion he had filed. The remaining counts were to be dismissed.

For the sentencing hearing, the court ordered a Static 99 report and on October 8, 2010, it appointed Dr. Marc Cohen to evaluate defendant for future dangerousness. Several continuances were granted as the court awaited Dr. Cohen’s report.

On February 14, 2011, the sentencing hearing was held. Defense counsel asked the court to strike defendant’s prior serious felony conviction. He argued that defendant’s 13-year-old attempted robbery conviction was remote, noting that it occurred

¹ All further statutory references are to the Penal Code.

when defendant was 18. He urged that a significant sentence could be imposed for the current offense without the prior strike.

The court set forth the factors that it considered: (1) the current offense was a violent felony; and (2) defendant's record included a number of convictions for theft and violence, his convictions were becoming increasingly serious, and he had three misdemeanor domestic violence convictions that occurred after his attempted robbery conviction. The court stated, "Because of the defendant's extensive record and because the current offense is serious and violent, the *Romero* motion is therefore denied." Defendant was sentenced to 17 years in prison, consisting of 12 years for the violation of section 288, subdivision (a) (the midterm of six years doubled pursuant to the Three Strikes law) and five years for the prior serious felony conviction pursuant to section 667, subdivision (a).

This timely appeal followed.

DISCUSSION

Defendant contends the court abused its discretion in denying his *Romero* motion. He argues that "in light of the nature and circumstances of the offense, [his] background, character, prospects, and even his prior record, the court's refusal to strike his strike conviction resulted in an unjust sentence. Rather, [he] should have been deemed outside the scheme's spirit and should have been treated as though he had not previously been convicted of his single serious felony in 1999 at the age [o]f 19—particularly since he was already being punished with a consecutive five year enhancement."

When ruling on a motion to strike a prior conviction, "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." (*People v. Williams* (1998) 17

Cal.4th 148, 161.) A trial court's refusal to strike a prior serious felony conviction is reviewed for abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 376.) "In reviewing for abuse of discretion, we are guided by two fundamental precepts." (*Ibid.*) First, defendant bears the burden of showing that the sentencing decision was irrational or arbitrary. Second, a decision will not be reversed simply because reasonable people might disagree. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977-978.) "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." (*People v. Carmony, supra*, 33 Cal.4th at p. 377.)

Defendant attempts to discount the seriousness of his current conviction, alleging that the parties were forced to reach a disposition because the victim lacked credibility. No matter how one chooses to characterize the manner in which the disposition was reached, the simple fact remains that defendant stands convicted of committing a lewd act upon a child. That crime is defined as a serious and violent felony. (§§ 1192.7, subd. (c)(6), 667.5, subd. (c)(6).) The court appropriately determined that the current offense militated against striking defendant's prior conviction.

Defendant asserts the trial court's conclusion that his record was extensive and of increasing seriousness is unreasonable. He claims that "[o]ne prior strike occurring over 13 years before the instant offense coupled with three misdemeanors, the latest of which was seven years before the instant offense, hardly constitutes an 'extensive' criminal record of 'increasing seriousness.'" Defendant mischaracterizes his record and unsuccessfully tries to minimize its seriousness.

Defendant was convicted of attempted robbery on September 21, 1999. The current offense was committed on August 1, 2008, just under nine years after the attempted robbery, not 13. The fact that a mere nine years passed between defendant's commission of two serious felony offenses does not work in his favor. (See *People v. Williams, supra*, 17 Cal.4th at p. 163 [that 13 years passed between the defendant's prior serious felony conviction and the current felony was "not significant"].) This is especially so when one considers the three misdemeanor domestic violence convictions

he suffered after the attempted robbery. Although the convictions were not felonies, all three incidents involved the same victim and the last two took place while he was on probation. This demonstrates that defendant's violent behavior was not altered notwithstanding the supervision of the court.

In addition, defendant's criminal record must be examined in context. Defendant was 28 years old when he committed the instant offense. In a span of nine years, beginning from when he turned 19, he had five convictions—two felonies and three misdemeanors—and all were for crimes of violence. Given defendant's age, it was not unreasonable for the court to conclude that he had an extensive record. Nor was it arbitrary for the court to find that defendant's crimes were increasing in seriousness. His most egregious offense was the current one.

Defendant states that his background, character, and prospects establish that he is outside the spirit of the Three Strikes law. At most, the letters submitted on his behalf show that there were periods when defendant comported himself like a respectable member of society. He held a job and took care of his daughter. Although commendable, it was not beyond the bounds of reason for the trial court to conclude that defendant's propensity for committing crimes outweighed his periods of good conduct.²

In the final analysis, the trial court's refusal to strike defendant's prior conviction did not constitute an abuse of discretion.

² The court stated that it read and considered the letters filed on defendant's behalf. Because the statement was made after the court denied the *Romero* motion and before it pronounced sentence, defendant states, "it is unclear whether the court considered the defense submitted sentencing letters in denying the *Romero* motion." We disagree. There is nothing in the record to suggest the court considered some of the defense exhibits for one purpose and ignored them for another.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.