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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.

CHARLES ROBERT WILLARD,

Defendant and Appellant.

B233492

(Los Angeles County
Super. Ct. No. BA362410)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gail Ruderman Feuer, Judge. Judgment of conviction affirmed, remanded for resentencing.

Renee Rich, 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, Linda C. Johnson and Blythe J. Leszkay, Deputy Attorneys General, for Plaintiff and Respondent.

Charles Robert Willard threatened two men on a bus with a knife, one of whom he stabbed. A jury convicted Willard on two counts of assault with a deadly weapon. (Pen. Code, § 245, subd. (a)(1).)¹ In a bifurcated proceeding, the trial court found Willard had suffered two prior serious felony convictions and one prior juvenile adjudication for robbery, making him eligible for sentencing under the “Three Strikes” law, and he had served separate prison terms for felonies. (§§ 667, subds. (a), (b)-(i), 1170.12, subds. (a)-(d); 667.5, subd. (b).) Willard was sentenced to an aggregate state prison term of 30 years to life. On appeal, he contends insufficient evidence supports the true finding on his prior 1978 juvenile robbery adjudication. We affirm the judgment of conviction and remand for resentencing.

FACTUAL AND PROCEDURAL BACKGROUND

During the court trial on Willard’s prior conviction allegations, the People introduced evidence of his two 1987 robbery convictions in Los Angeles Superior Court case No. A635439² and his 1978 juvenile adjudication for robbery in case No. J250484. With respect to his juvenile adjudication, the admitted evidence showed Willard was born on October 1, 1960, arrested for committing robbery (§ 211) on February 22, 1978, adjudicated as having committed the offense on June 13, 1978, and confined at the California Youth Authority, as it was formerly known, from June 19, 1978 until October 15, 1981.

The trial court found true Willard’s three prior strike convictions, and sentenced him to an aggregate term of 30 years to life.

DISCUSSION

Willard contends, and the People acknowledge, the evidence is insufficient to support a finding that he was at least 16 years old at the time he committed robbery.

¹ Statutory references are to the Penal Code, unless otherwise indicated.

² Case numbers refer to Los Angeles Superior Court cases.

The Three Strikes law expressly permits a prior juvenile adjudication to constitute a felony strike when: “(A) The juvenile was 16 years of age or older at the time he or she committed the prior offense. [¶] (B) The prior offense is listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or described in paragraph (1) or (2) as a felony. [¶] (C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law. [¶] (D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.” (§ 667, subd. (d)(3)(A-D).) Paragraphs (A) through (D) of subsection (d)(3) “all state independent necessary requirements for use of a prior juvenile adjudication.” (*People v. Garcia* (1999) 21 Cal.4th 1, 12.)

A prior conviction must be proved beyond a reasonable doubt. (*People v. Henley* (1999) 72 Cal.App.4th 555, 562.) The prosecution must establish the fact of the defendant’s conviction and that the conviction was of an offense within the definition of the particular statute invoked, and any other element required by the statute alleged. (*Ibid.*) The trier of fact is entitled to draw reasonable inferences from certified records offered to prove the prior conviction. However, such inferences must be supported by substantial evidence. (*Id.* at p. 651.)

We agree the evidence is insufficient that Willard was at least 16 years old at the time he committed the robbery which is the subject of his juvenile adjudication. The record establishes he was born on October 1, 1960, making him 17 years old when he was thereafter committed to the California Youth Authority (now the Division of Juvenile Facilities) for robbery. The People did not produce a Welfare and Institutions Code section 602 petition or other documents showing the date of the offense or Willard’s age at the time of the offense. In the absence of this evidence, Willard’s juvenile adjudication does not qualify as a strike. We remand the matter for a further evidentiary hearing at the People’s election as permitted by *People v. Barragan* (2004) 32 Cal.4th 236, which held that for Three Strikes sentencing purposes, an alleged prior juvenile adjudication may be retried.

Whether or not the People elect to retry the juvenile adjudication, we note that Willard's two 1987 convictions for robbery arose from the same incident, and the trial court may choose, on remand, to exercise its discretion to strike one of those qualifying prior strike convictions in resentencing Willard. (*People v. Benson* (1998) 18 Cal.4th 24, 36 fn. 8. ["Because the proper exercise of a trial court's discretion under section 1385 necessarily relates to the circumstances of a particular defendant's current and past criminal conduct, we need not and do not determine whether there are some circumstances in which two prior felony convictions are so closely connected--for example, when multiple convictions arise out of a single act by the defendant as distinguished from multiple acts committed in an indivisible course of conduct--that a trial court would abuse its discretion under section 1385 if it failed to strike one of the priors."].)

DISPOSITION

The judgment of conviction is affirmed, and the cause is remanded for resentencing in accordance with this opinion.

WOODS, Acting P. J.

We concur:

ZELON, J.

JACKSON, J.