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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

DARRYL C. BUCKELS,

Defendant and Appellant.

B252862

(Los Angeles County
Super. Ct. No. KA094626)

APPEAL from a judgment of the Superior Court of Los Angeles County. Mike Camacho, Judge. Affirmed.

James Koester, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Lance E. Winters, Assistant Attorney General, Shawn McGahey Webb and Esther P. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found Darryl Buckels guilty of three counts of attempted murder and found firearm and gang enhancement allegations to be true. After Buckels admitted a prior serious or violent felony conviction, the trial court sentenced him under the “Three Strikes” law to 170 years to life in prison. In a prior appeal,¹ Buckels contended the trial court erred in sentencing him. This court agreed, finding the record indicated the trial court misunderstood the scope of its discretion to impose concurrent sentences for Buckels’s attempted murder convictions and erroneously believed consecutive sentences were mandatory. We vacated Buckels’s sentence and remanded the matter for a new sentencing hearing, expressing no opinion on whether the trial court should impose concurrent or consecutive sentences in the exercise of its discretion.

In this appeal, Buckels again contends the trial court abused its discretion in imposing consecutive rather than concurrent sentences on the three attempted murder counts. Rejecting Buckels’s challenge to the trial court’s statement of reasons for imposing consecutive sentences, we affirm.

BACKGROUND

Trial, Verdicts and Original Sentencing Hearing

In setting forth the evidence presented at trial, the verdicts, and the original sentence, we quote from our opinion in the prior appeal in this case:

“In the afternoon on June 14, 2011, Alfredo Lopez, Benjamin Valencia and Raul Valdez (the victims) were sitting under a tree smoking when Buckels walked up to them and asked, “Where are you from?” The victims understood Buckels was asking them if they belonged to a gang. They told Buckels they were from “nowhere” and did not “bang.” Buckels continued ‘pushing the issue’ and asking the victims if they were from “somewhere.” They continued to deny any gang affiliation. Buckels grabbed a cigarette from Valdez, saying, “It is my cigarette.” Buckels also said he was from Neccland Crips gang. Buckels walked away.

¹ *People v. Buckels* (June 27, 2013, B242631) [nonpub. opn.].

“When Buckels was about 15 feet away from the victims, he started shooting a gun at them. A bullet struck Lopez near his left shoulder and lodged inside his body. As Lopez ran away, another bullet entered and exited his left arm near his wrist. A bullet grazed Valencia’s left leg, leaving a wound that required six stitches.

“Detectives interviewed Buckels three days after the shooting. The interview was video recorded. The video was played for the jury. During the interview, Buckels admitted he fired his gun in the victims’ direction. He claimed he was not trying to hit them. He said he was angry because he believed the victims were responsible for firing upon his mother’s car while it was unoccupied and parked in the driveway of his residence. He approached the victims and asked them about the car shooting, but they denied involvement. As he was walking away from them, one of the victims said “some slick shit” to him and he began firing.² Buckels denied the shooting was gang motivated and denied asking the victims where they were from.

“The parties stipulated Neccland Crips is a criminal street gang within the meaning of [Penal Code] section 186.22, subdivision (b). The prosecution’s gang expert testified Buckels is an admitted member of Neccland Crips and had numerous tattoos demonstrating his affiliation with Neccland Crips. The expert also testified the scene of the offenses in this case is an area claimed by a rival gang of Neccland Crips. The expert stated a Neccland Crips gang member goes into rival gang territory with a gun ‘to put in work’ for the gang. In response to the prosecutor’s hypothetical based on the facts of this case, the expert opined the shooting was committed for the benefit of the gang. According to the expert, this type of shooting ‘instills fear within the community that Neccland Crips will act any time, day or night, and it also builds his status up within the gang where’s he’s brazen enough to go out in the middle of the day and commit this crime.’

² Based on this evidence, the trial court decided to instruct the jury on attempted voluntary manslaughter (heat of passion), over the prosecutor’s objection.

“The jury found Buckels guilty of the attempted murders of Alfredo Lopez, Benjamin Valencia and Raul Valdez (Pen. Code,³ §§ 187, subd. (a) & 664), and found true allegations that the attempted murders were willful, deliberate and premeditated. The jury also found true allegations that, in the commission of the attempted murders, Buckels personally and intentionally discharged a firearm, causing great bodily injury to Lopez and Valencia. (§ 12022.53, subds. (b)-(d).) Finally, the jury found true gang enhancement allegations under section 186.22, subdivision (b). Buckels waived his constitutional rights and admitted the allegations that he had sustained a prior conviction of a serious or violent felony (attempted robbery) within the meaning of the prior serious felony enhancement and the Three Strikes law. (§§ 667, subd. (a)(1), (b)-(i) & 1170.12, subds. (a)-(d).)

“The trial court sentenced Buckels to 170 years to life in prison. For the attempted murder of Lopez (count 1), the court sentenced Buckels to 15 years to life (§ 186.22, subd. (b)(5)), doubled to 30 years to life under the Three Strikes law, plus a consecutive term of five years for the prior serious felony enhancement under section 667, subdivision (a)(1), and a consecutive term of 25 years to life for the firearm enhancement under section 12022.53, subdivision (d). The court sentenced Buckels consecutively on the attempted murders of Valencia (count 2) and Valdez (count 3), imposing the same terms it had imposed on count 1, minus the 5 years for the prior serious felony. Hence, the court sentenced Buckels to 55 years to life on count 2 and 55 years to life on count 3.” (*People v. Buckels, supra*, B242631, pp. 2-4.)

Prior Appeal and Remand for Resentencing

As stated above, Buckels appealed from the judgment, challenging his sentence. This court vacated the sentence and remanded the matter for a new sentencing hearing, finding the record indicated the trial court erroneously believed it was required to impose consecutive sentences on the three counts of attempted murder. The trial court had discretion to impose either consecutive or concurrent sentences. We expressed no

³ Further statutory references are to the Penal Code.

opinion on whether the trial court should impose concurrent or consecutive terms in the exercise of its discretion at the resentencing hearing. (*People v. Buckels, supra*, B242631, pp. 6-9.)

On October 7, 2013, Buckels submitted a sentencing memorandum urging the trial court to impose concurrent terms “because each of the attempted murders was arguably the result of a single, albeit intertwined intent, to exact revenge upon the individual or individuals whom Mr. Buckels believed were somehow responsible for the just recent ‘shooting up’ of his mother’s car.” Buckels stated, “The three crimes were tried under, and the jury was instructed, that Mr. Buckels could be convicted on a ‘kill zone’ theory of liability in which his intent to kill any one of the three individuals could be transferred to any of the others.”

On October 23, 2013, Buckels submitted a supplemental sentencing memorandum asking the trial court to dismiss his prior strike conviction for attempted robbery in the furtherance of justice under section 1385.⁴ He also again urged the court to impose concurrent terms, this time arguing the court should consider him “a youthful offender” in evaluating whether consecutive terms would constitute cruel and unusual punishment. He acknowledged, however, that he was 19 years old when he committed the offenses and no longer “a youthful offender” in the eyes of the courts.

The district attorney submitted a sentencing memorandum, arguing the trial court’s original sentence of 170 years to life “was appropriate given [Buckels]’s conduct in the instant case, as well as his prior conduct in his attempted robbery case and while he was on probation for it.” The district attorney urged the court to deny Buckels’s request for dismissal of his prior strike conviction, and argued consecutive sentences were warranted because Buckels, a 19-year-old adult on probation, “attempted to kill three separate victims, and did so by firing more than one shot at them.”

⁴ Buckels was on probation for the attempted robbery at the time he committed the present offenses.

At the outset of the November 6, 2013 resentencing hearing, the trial court explained it understood the scope of its discretion to impose either concurrent or consecutive terms when it originally sentenced Buckels, but acknowledged it did not clearly articulate that understanding on the record at the original sentencing hearing. The court then denied Buckels's request for dismissal of his prior strike conviction.⁵

At the resentencing hearing, the trial court imposed the same sentence it had imposed at the original sentencing hearing, 170 years to life in prison (as outlined in more detail above with respect to each count). The court noted Buckels was on probation when he committed the present offenses. In exercising its discretion to run the term on count 2 consecutively with count 1, the court stated:

“What we are dealing with are separate victims in this case. Each of these three victims were not a threat to Mr. Buckels at the time those shots were fired; quite frankly, even before the shots were fired. Mr. Buckels obviously was aggravated with these three individuals because they had nothing of value for him to steal at gunpoint except for that cigarette that was taken away from them. Obviously that didn't sit well with Mr. Buckels. These three individuals turned and walked away from Mr. Buckels. Mr. Buckels separated himself from those three individuals and for whatever reason turned around, produced a firearm, and shot several rounds at these three young men, causing them to flee from the gunfire on foot and obviously two of the three were struck and injured with gunfire. Mr. Buckels allegedly made . . . his statements to law enforcement justifying that conduct, claiming that he felt those three individuals or at least one of the three was responsible for vandalizing his mother's vehicle on a prior occasion, for shooting at it and damaging the vehicle. Even if that was true that they committed an act of vandalism, that does not in any way, shape, or form justify taking the life of those individuals in any respect, not as a matter of law or even as a matter of reasonableness, quite frankly.”

⁵ We do not set forth the reasons for the court's denial because Buckels does not challenge this ruling on appeal.

In electing to sentence Buckels to another consecutive term on count 3, the trial court made the following additional comments:

“Again, this is a separate victim whose life is also in danger as a result of this conduct. This is not a case where a group of individuals are grouped together and a single round is fired toward the group, intending to kill one of the people. These are multiple shots fired and obviously endangering the life of all three individuals by each gunshot.”

DISCUSSION

Buckels contends the trial court abused its discretion in sentencing him to consecutive terms on the three attempted murder counts.

A trial court has “broad discretion to impose consecutive sentences when a person is convicted of two or more crimes.” (*People v. Shaw* (2004) 122 Cal.App.4th 453, 458, citing § 669.) The court must state on the record its reasons for imposing consecutive sentences. (Cal. Rules of Court, rule 4.406(a) & (b)(5).) “In the absence of a clear showing of abuse, the trial court’s discretion in this respect is not to be disturbed on appeal. [Citation.] Discretion is abused when the court exceeds the bounds of reason, all of the circumstances being considered.” (*People v. Bradford* (1976) 17 Cal.3d 8, 20.)

California Rules of Court, rule 4.425 sets forth “[c]riteria affecting the decision to impose consecutive rather than concurrent sentences,” including:

“(a) Criteria relating to crimes

“Facts relating to the crimes, including whether or not:

“(1) The crimes and their objectives were predominantly independent of each other;

“(2) The crimes involved separate acts of violence or threats of violence; or

“(3) The crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior.

“(b) Other criteria and limitations

“Any circumstances in aggravation or mitigation may be considered in deciding whether to impose consecutive rather than current sentences, except:

“(1) A fact used to impose the upper term;

“(2) A fact used to otherwise enhance the defendant’s prison sentence; and

“(3) A fact that is an element of the crime may not be used to impose consecutive sentences.” (Cal. Rules of Court, rule 4.425.)

A court also may apply any “additional criteria [not enumerated in the rules that are] reasonably related to the decision” to impose consecutive rather than concurrent sentences. (Cal. Rules of Court, rule 4.408(a).) “Articulation of one criterion for the imposition of a consecutive sentence is sufficient.” (*People v. Bravot* (1986) 183 Cal.App.3d 93, 98.)

The trial court sentenced Buckels to consecutive terms because there were three separate victims. “[T]he naming of separate victims in separate counts is a circumstance on which a trial court may properly rely to impose consecutive sentences.” (*People v. Caesar* (2008) 167 Cal.App.4th 1050, 1061, disapproved on other grounds in *People v. Superior Court (Sparks)* (2010) 48 Cal.4th 1, 18.)

Buckels argues the trial court’s reason for imposing consecutive sentences—three separate victims—“is substantially diluted when considered within the contextual fact that [Buckels] was prosecuted under a kill zone theory of liability in which he may have harbored just a singular intent to harm only one of the individuals rather than purposefully intending to assault each of them.” The trial court rejected this argument, pointing out Buckels fired multiple rounds at the three victims, striking two of them. The court commented: “This is not a case where a group of individuals are grouped together and a single round is fired toward the group, intending to kill one of the people. These are multiple shots fired and obviously endangering the life of all three individuals by each gunshot.”

Buckels also asserts, “The [trial] court did not consider the possibility that appellant was somewhat provoked by the recent shooting up of his mother’s car to be a

significant factor in mitigation.” That is correct. The court considered this factor and commented that even if one or more of the victims did shoot at his mother’s unoccupied vehicle on a prior occasion, Buckels response—firing multiple rounds at three individuals—was disproportionate and was not a factor in mitigation warranting concurrent sentencing on the three attempted murder counts.

Buckels’s final argument in support of his contention the trial court abused its discretion in imposing consecutive sentences and a “virtual life without parole sentence” is his age at the time he committed the offenses, 19 years and four months. (See *Graham v. Florida* (2010) 560 U.S. 48, 82 [“The Constitution prohibits the imposition of a life without parole sentence on a *juvenile offender* who did not commit homicide”], italics added; *People v. Caballero* (2012) 55 Cal.4th 262, 265 [“a 110-year-to-life sentence imposed on a *juvenile* convicted of nonhomicide offenses contravenes *Graham*’s mandate against cruel and unusual punishment under the Eighth Amendment”], italics added.) Buckels acknowledges he “unquestionably does not fall within the categorical group of defendants [those under 18 years of age] upon whom a life without parole sentence is necessarily constitutionally cruel and unusual.” He argues, however, his age and concomitant “less developed sense of moral responsibility” should have been “a substantial factor in the trial court’s exercise of its discretion to sentence [him] to concurrent rather than consecutive terms.” We cannot hold the trial court abused its discretion in declining to impose concurrent sentences based on Buckels’s age, given Buckels was not a juvenile offender when he committed the offenses.

The trial court did not exceed the bounds of reason in imposing consecutive sentences for Buckels—a 19-year-old adult on probation for attempted robbery—who committed three counts of attempted murder by firing multiple rounds at three separate victims.

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur:

JOHNSON, J.

BENDIX, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.