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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.

JOSEPH FLAUNDERS,

Defendant and Appellant.

B266273

(Los Angeles County
Super. Ct. No. BA432814)

APPEAL from a judgment of the Superior Court of Los Angeles County. Richard S. Kemalyan, Judge. Affirmed.

Lise M. Breakey, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell and Timothy L. O’Hair, Deputy Attorneys General, for Plaintiff and Respondent.

Joseph Flaunders stabbed his drug dealer multiple times after a disagreement. A jury convicted him of assault with a deadly weapon and found that he caused great bodily injury. Based on his two prior violent felony convictions, the court sentenced Flaunders to 39 years to life in prison under the “Three Strikes” law. Flaunders contends the trial court abused its discretion in denying his request to dismiss one or both of his prior strike convictions in the interest of justice. We disagree and affirm the judgment.

FACTS AND PROCEEDINGS BELOW

Prosecution Evidence

On January 10, 2015, as Jeremy Roberts was walking to work, he passed Flaunders and Joshua Doxie talking on the sidewalk. Seconds later, Roberts heard them begin to argue and turned around to see the two men on the ground fighting. Flaunders was on top of Doxie and was repeatedly stabbing him with a knife with an eight-inch blade. Roberts yelled at Flaunders to stop, which he did. Roberts then called 911. Flaunders briefly left the scene, but returned a few minutes later, retrieved his knife and remained at the scene until the police arrived.

Police arrived and detained Flaunders. Flaunders suffered two cuts to his left thumb and was transported to the hospital in custody. While waiting for treatment, he spoke loudly, stating: “The motherfucker tried to rip me off. I had to stand up for myself.”

Doxie was treated at the hospital for stab wounds to his shoulder, rib cage and hip. He underwent surgery and suffered significant blood loss.

Defense Evidence

Flaunders testified that he had known Doxie for approximately two months. On the day of the stabbing, Flaunders alleged that he was looking for Doxie because Doxie had sold Flaunders methamphetamine, which Flaunders believed was “no good.” Flaunders found Doxie at a Jack-In-The-Box and confronted him about the purported bad drugs. After a 20-minute discussion, the two left the restaurant together. Once outside, Doxie asked Flaunders if he had any of the drugs leftover from the sale, and when

Flaunders said he did not, Doxie hit Flaunders. Flaunders was frightened and believed his life was in danger. He pulled out his knife, which he purportedly carried with him to collect recyclable materials from public garbage cans, and stabbed Doxie several times. Flaunders stated he acted in self-defense.

Conviction and Sentencing

The Los Angeles District Attorney (DA) charged Flaunders with two counts: (1) attempted murder (Pen. Code, §§ 664, 187, subd. (a))¹; and (2) assault with a deadly weapon (§ 245, subd. (a)(1)). For both counts, the DA also alleged that Flaunders personally used a deadly weapon (§ 12022, subd. (b)(1)) and personally inflicted great bodily harm (§ 12022.7, subd. (a)). Finally, the DA alleged that Flaunders had two prior serious and/or violent felony convictions within the meaning of section 667, subdivisions (a) and (b)-(j), specifically two robberies committed in 1980 and 1984 respectively. Flaunders pleaded not guilty and denied the special allegations.

The jury acquitted Flaunders of attempted murder, found him guilty of assault with a deadly weapon, found that he personally used a deadly weapon (§ 12022, subd. (b)(1)) and personally inflicted great bodily harm (§ 12022.7, subd. (a)). At a later hearing, the court found the prior conviction allegations to be true and denied Flaunders's motion to strike one or both of his prior convictions.

The court sentenced Flaunders to 39 years to life in state prison, calculated as 25 years to life pursuant to the Three Strikes law (§ 667, subd. (b)-(j)), plus one year for the weapon enhancement (§ 12022, subd. (b)(1)), three years for the great bodily injury enhancement (§ 12022.7, subd. (a)) and two 5-year terms for the prior convictions (§ 667, subd. (a)(1)).

Flaunders filed a timely appeal.

¹ All statutory references are to the Penal Code.

DISCUSSION

The Trial Court Did Not Abuse Its Discretion By Declining To Strike The Prior Convictions.

Flaunders argues that the trial court abused its discretion in failing to strike one or both of his strike convictions based on his age (63 years old) and the “extreme remoteness of his prior convictions,” which occurred in 1980 and 1984. We disagree.

Section 1385, subdivision (a), authorizes a trial court to exercise its discretion to dismiss a defendant’s prior serious or violent felony conviction. (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 529-530.) The court’s discretion, however, is limited. (*Id.* at p. 530.) “[T]he court in question must consider whether, in light of the nature and circumstances of [the defendant’s] 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 [of the Three Strikes sentencing] scheme’s spirit, in whole or in part.” (*People v. Williams* (1998) 17 Cal.4th 148, 161.) Absent an affirmative disclosure on the record to the contrary, we presume the court considered all pertinent factors in determining whether to dismiss a prior serious or violent felony conviction. (*People v. Myers* (1999) 69 Cal.App.4th 305, 310.)

According to Flaunders, the court failed to give sufficient weight to his age and that his prior strikes were 33 and 36 years old. We disagree.

In deciding whether to strike the prior convictions, the court specifically noted Flaunders’s age and the remote nature of the prior convictions, stating “they are older convictions[,] and even though [appellant] is—is not the youngest of individuals, although every day he appears to be younger to me, I do recognize that his age is a factor that the court has and should consider, and as I’ve indicated, I am considering it.” Nevertheless, the court declined to strike his prior convictions reasoning that the priors “were robberies involving crimes of violence and, of course, the present conviction is a crime of violence” Accordingly, the court found that, although the length of time between the commission of the prior crimes and current conviction was lengthy, the violent nature of *all* the offenses weighed against striking the prior convictions.

(See *People v. Solis* (2015) 232 Cal.App.4th 1108, 1124 [holding that the trial court did not abuse its discretion in denying motion to strike prior convictions predating the underlying conviction by 30 years because the prior crimes were violent felonies].)

Moreover, contrary to Flaunders’s position that he had a 33-year gap in his criminal record, Flaunders had additional convictions after the 1980 and 1984 strike convictions, including a 1988 conviction for assault with a deadly weapon, a 1991 conviction for bank robbery, a 2010 conviction for driving without a license and a 2011 conviction for possession of a controlled substance.

Additionally, the advanced age of the defendant is not a dispositive factor, particularly in light of Flaunders’s current conviction for a violent crime, which involved the repeated stabbing of his drug dealer. (*People v. Strong* (2001) 87 Cal.App.4th 328, 345 [noting that age, “considered alone, does not remove a defendant from the spirit of the Three Strikes law. Otherwise, those criminals with the longest criminal records over the longest period of time would have a built-in argument [against] that . . . very factor that takes them within the spirit of the Three Strikes law.”].)

Contrary to Flaunders’s contention, the court did give due weight to his age and the age of his prior violent felony convictions, but in light of his history determined they were not dispositive. That decision was not an abuse of discretion.

DISPOSITION

The judgment is affirmed.

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ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.