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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
GLENN MARK ROBINSON,  
  
Defendant and Appellant.

C066124

(Super. Ct. No.  
07F04392)

Defendant Glenn Mark Robinson appeals the sentence imposed following his convictions for two counts of second degree robbery (Pen. Code, § 211),<sup>1</sup> with true findings he had six prior strike convictions (§§ 1170.12, 667, subds. (b)-(i)) and three

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<sup>1</sup> Further undesignated statutory references are to the Penal Code.

prior serious felony convictions (§ 667, subd. (a)). He contends the trial court abused its discretion in denying his *Romero*<sup>2</sup> motion and failing to dismiss at least five of his six prior convictions. We affirm.

#### **FACTUAL BACKGROUND**

On April 26, 2007, defendant went into the El Dorado Savings Bank, handed teller Grace Hernandez a note demanding money in specified denominations, and threatened to hurt someone if she did not give him the money. Defendant was very agitated and Hernandez was afraid of him, as she believed his threat. Hernandez gave him all the money in her bank drawers. Defendant took the money and left the bank.

Four days later, defendant went into a Citibank and passed a note to assistant operations manager Betty Bouaphavong, who was working as a teller. The note said "robbery" and listed monetary denominations. Bouaphavong initially misunderstood defendant's intentions and returned the note to him, to which he responded "This is a robbery" and "hurry up." Defendant then threatened to hurt the next person in line, an elderly client, if Bouaphavong did not give him the money. Bouaphavong gave defendant the money. He stuffed it in his shirt and left the bank after being assured Bouaphavong did not have more money at her station.

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<sup>2</sup> *People v. Superior Court (Romero)* 1996 13 Cal.4th 497 (Romero).

Eventually law enforcement tracked defendant to a gas station. With guns drawn, officers demanded defendant get out of his car. Defendant refused to comply with officers' demands for approximately 50 minutes. He appeared agitated, nervous, and sweaty. Defendant called his estranged wife during the standoff. He told her he had robbed a bank, been caught, and was going to die. On the phone, defendant sounded sad and frightened, but not angry or discombobulated. After about 50 minutes, defendant threw his wallet, keys, and an envelope addressed to his estranged wife out the window of the car. Shortly thereafter, defendant exited the vehicle and was handcuffed and arrested. In defendant's vehicle, officers found a backpack containing over \$4,700 of stolen money, and a note written on a receipt from a store in the same complex as the bank that said "Robbery" and listed monetary denominations.

In the months prior to the robberies, defendant had lost his contracting business and his family finances had deteriorated. Also during that time, his pattern of drug-induced behavior occurred more often. On the rare occasions his ex-wife spoke with him, he seemed irrational.

#### **PROCEDURAL HISTORY**

Defendant was charged with two counts of second degree robbery. (§ 211.) It was also alleged defendant had six prior strike convictions (§§ 1170.12, 667, subds. (b)-(i)), six prior serious felony convictions (§ 667, subd. (a)), and one prior prison term (§ 667.5, subd. (b)). Ultimately, the prosecution moved to dismiss the prior prison term allegation and three of

the prior serious felony conviction allegations. Following a jury trial, defendant was convicted of both robbery charges. In bifurcated proceedings, the court found the three prior serious felony convictions and all six prior strike conviction allegations true.

Defendant filed a *Romero* motion, requesting the court strike the prior strike convictions in the interest of justice. Defendant argued all of his crimes were committed as the result of drug use and the concomitant effects on his psyche, and throughout his extensive criminal history he had never physically injured anyone. He submitted a psychological evaluation that concluded he had symptoms of amphetamine-induced psychosis at the time the offenses were committed. Defendant also argued the crime was not violent in nature, was relatively minor compared to other robberies in that no one was hurt, and he did not use any weapons. The prosecution filed written opposition.

The court heard oral argument on the issue. Counsel argued that defendant would work hard to address his drug addiction and had shown he could contribute to society when he was clean and sober. Counsel noted defendant had taken responsibility for his actions and expressed remorse over the harm caused to his victims. Counsel reiterated the point that defendant had "never left a single injured victim in his wake. He has never physically harmed a single person in his life." Defendant also personally addressed the court. He apologized for his criminal behavior, and claimed he posed no threat and had not intended to

harm anyone. He admitted he had relapsed and been using drugs when he committed this offense but stated that when he was clean and sober he functioned well within society, and he had been clean and sober for three years. He reiterated the point that he had not used any weapons or committed any violence against anyone. Lori Severance, a licensed clinical social worker with the jail, also spoke on defendant's behalf.

Defendant's past criminal history revealed he had been convicted in 1980 of bank robbery, bank robbery with force, and grand theft. He was paroled in 1984 and successfully completed parole. In 1990 he was convicted of reckless evasion of a police officer. One year later, he was convicted of three counts of attempted robbery, escaping from a correctional facility, vandalism, and providing false information to a police officer. After being paroled, he was returned to custody once for a parole violation. In 1994 he was convicted of being under the influence of a controlled substance. In 1995 he was again convicted of bank robbery. He was sentenced to seven years eight months for that offense. In 2004 he was convicted of falsely representing his identity to a police officer.

Defendant was 53 years old at the time of sentencing. He had received his GED, was not married, and had no children. He had a neck injury that required pain killers and he suffered from depression. Defendant had owned his own roofing contractor business. Until his arrest, he used methamphetamine daily. Twice while in jail on the current offenses, defendant was found in possession of pills.

Following argument, the court delineated the standards governing the exercise of its discretion to dismiss a prior strike. The court expressly considered defendant's constitutional rights and the interests of society. The court reviewed defendant's criminal history, the nature and circumstances of defendant's prior strikes, and his intervening continued criminality. The court acknowledged defendant's period of largely being compliant with parole. The court also acknowledged that no one had been physically injured but also observed that the offenses involved elements of force or fear, so there was some level of violence. The court noted defendant's prior offenses were also for bank robberies, again by their nature both serious and violent offenses. The court further found defendant's acts involved a threat of harm to people, a high degree of callousness in making those threats, and that the manner in which the crimes were carried out demonstrated planning, sophistication, and professionalism and involved taking large sums of money. The court specified that in the span of 27 years, defendant had committed eight robberies or attempted robberies. The court believed defendant was remorseful and considered that, as well as defendant's background, character, and prospects. Based upon the court's review of the case law, the court could not find defendant outside the spirit of the "three strikes" law. Accordingly, the motion was denied.

Defendant was sentenced to a determinate term of 30 years and a consecutive indeterminate term of 50 years to life in

prison. Defendant was ordered to pay a restitution fund fine of \$1,000, mandatory fines and fees were imposed, and defendant was awarded a total of 1,367 days of presentence custody credits.

#### DISCUSSION

Defendant contends this is a "unique case" in which we should determine the trial court "failed to make an informed exercise of its sentencing discretion and it abused its discretion by declining to dismiss at least five of [defendant's] six prior strikes in the interests of justice." He contends the trial court "did not consider all relevant sentencing factors which supported dismissing [defendant's] prior strikes, and it also failed to consider viable sentencing alternatives." The record before us would not support such a finding. Accordingly, we will affirm.

A trial court has the discretion to strike a prior serious felony conviction for purposes of sentencing only if the defendant falls outside the spirit of the three strikes law. (§ 1385; *People v. Williams* (1998) 17 Cal.4th 148, 161; *Romero*, *supra*, 13 Cal.4th at pp. 529-530.) In ruling on a *Romero* motion, 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*, at p. 161.) The court's discretion is limited

by the concept of "furtherance of justice," requiring the court to consider both the defendant's constitutional rights and the interests of society. (*Romero, supra*, at p. 530.) Dismissal of a strike is a departure from the sentencing norm, and as such, we will not reverse the ruling on a *Romero* motion for an abuse of discretion unless the defendant shows the decision was "so irrational or arbitrary that no reasonable person could agree with it." (*People v. Carmony* (2004) 33 Cal.4th 367, 377.) Reversal is justified where the trial court was unaware of its discretion to strike a prior strike or refused to do so, at least in part, for impermissible reasons. (*Id.* at p. 378.) But where the trial court was aware of its discretion, "'balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court's ruling . . .'" [*citation*]." (*Ibid.*)

Here, the court expressly delineated the legal standards governing its discretion. It considered the parties' written and oral arguments, defendant's personal statement, a psychological evaluation of defendant, character references, and the probation report. The court thoroughly reviewed the relevant facts underlying its decision and expressly considered defendant's constitutional rights and the interests of society.

The court recounted defendant's criminal record and noted he was generally compliant on parole, but had engaged in continuing criminal conduct. Because of the continuing criminal conduct, spanning over 27 years, the court found defendant's prior convictions were not too remote. The court acknowledged

defendant's claim that his offenses were not violent, but disagreed with that assessment as the offenses involved the use of force or fear, which was an element of violence. The court also acknowledged defendant's problem with drug addiction and its contribution to his criminality, as well as some of the difficulties defendant had faced, but rejected those factors as the cause of his repeated decisions to rob banks. The court also expressly considered the factors in mitigation and aggravation, as described in the California Rules of Court. (*People v. Cluff* (2001) 87 Cal.App.4th 991, 1004.) The court found the threats of violence demonstrated callousness, the robberies evidenced planning, and a great deal of money was taken. The court found no statutory factors in mitigation applied. The court did, however, believe defendant's expressions of remorse and considered that as a mitigating factor. The court did not believe defendant's claim that he was under "some hallucination or delusion" when he committed the offenses.

The court here was clearly aware of its discretion and the standards governing the exercise of that discretion. It considered the relevant facts and reached an impartial decision. Based on its consideration of the relevant facts and the totality of the circumstances, the court found defendant fell within the spirit of the three strikes law and denied his *Romero* motion. There is no abuse of discretion in this decision; nothing in this record removes defendant from the three strikes scheme.

Defendant also claims the court did not recognize it "had an option of dismissing less than all of [defendant's] prior strikes as to both counts, and its failure to consider whether any of the sentencing alternatives would be an appropriate disposition, indicates that the court's decision not to dismiss any of [defendant's] strikes was not a true exercise of discretion."

On review, we presume the trial court was aware of the parameters of its sentencing discretion. (*People v. Burnett* (2004) 116 Cal.App.4th 257, 261; *People v. Mosley* (1997) 53 Cal.App.4th 489, 496.) It is defendant's burden to affirmatively establish the trial court misunderstood the scope of its sentencing discretion. (*People v. Fuhrman* (1997) 16 Cal.4th 930, 948 (conc. opn. of Chin, J.).) Here, defendant has not met this burden. Nothing in the record before us suggests the court was unaware of the full panoply of sentencing options available to it. In fact, the prosecution specifically pointed out that to alter defendant's sentence, the court would have to strike five of the six prior convictions. Thus, the issue of dismissing less than all of defendant's prior convictions was before the court. The trial court considered all the matters that were brought to its attention. Having done so, the court concluded that defendant did not fall outside the ambit of the three strikes law and that striking any of defendant's strikes was not warranted. That conclusion was not irrational or arbitrary on these facts, nor was it premised on

improper considerations. Accordingly, we find no abuse of discretion.

**DISPOSITION**

The judgment is affirmed.

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RAYE, P. J.

We concur:

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ROBIE, J.

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MAURO, J.