

NOT TO BE PUBLISHED

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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  
THIRD APPELLATE DISTRICT  
(Sacramento)

THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
DARRELL TYJUAN ALLEN,  
  
Defendant and Appellant.

C066463  
  
(Super. Ct. No.  
09F07120)

A jury convicted defendant Darrell Tyjuan Allen of fleeing from a pursuing officer by means of a high speed chase (Veh. Code, § 2800.2, subd. (a)), willful driving on the wrong side of the road while so fleeing (Veh. Code, § 2800.4), and driving with a revoked or suspended license (Veh. Code, § 14601.1, subd. (a)). In a trial by court, the court found defendant had a prior strike conviction for robbery (Pen. Code, § 211).

Prior to sentencing, the court denied defendant's request, pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*), to strike his prior strike conviction. The court sentenced defendant to state prison for 32 months for the Vehicle Code section 2800.4 conviction; 16 months for the Vehicle Code section 2800.2 conviction, but stayed that term pursuant to Penal Code section 654; and 30 days concurrent for the Vehicle Code section 14601.1, subdivision (a) conviction.

On appeal, defendant contends the trial court abused its discretion in denying his *Romero* request. We disagree.

#### FACTS

At about 11:30 p.m., Highway Patrol Officer Chris Abbott was in a commercial parking lot monitoring traffic on Walerga Road, which had a speed limit of 45 miles per hour, when he saw a Chevy Camaro driven by defendant go by traveling at an estimated speed of 90 miles per hour. The area being monitored consisted of residential and commercial buildings, including a Chevron station, an AM/PM store, a 24-Hour Fitness Center, and a Walgreen's store, all of which were open at the time.

Officer Abbott drove after the Camaro and activated his vehicle's flashing lights and siren in an attempt to effect a stop. The Camaro did not stop, but instead proceeded through an intersection, braked to about 45 miles per hour and made a right-hand turn, skidded into an oncoming lane in which he continued to drive for a block. After running a stop sign, the Camaro continued in a residential area, where the speed limit

was 25 miles per hour, driving between 40 to 50 miles per hour on one street and up to 70 miles per hour on another.

The chase ended after defendant braked hard, swerved to the right side of the road and Officer Abbott drove his vehicle beside defendant's door to prevent the latter's possible escape. Defendant initially refused Officer Abbott's orders to get out of the Camaro but eventually he complied and was arrested at gunpoint. Defendant was driving with a suspended license.

#### DISCUSSION

Defendant contends the trial court abused its discretion when it denied his *Romero* request. We disagree.

"In *Romero*, [the Supreme Court] held that a trial court may strike or vacate an allegation or finding under the Three Strikes law that a defendant has previously been convicted of a serious and/or violent felony, on its own motion, 'in furtherance of justice' pursuant to Penal Code section 1385(a)." (*People v. Williams* (1998) 17 Cal.4th 148, 158.) The trial court's decision whether to strike such an allegation is reviewable under the abuse of discretion standard. (*Id.* at pp. 158-159.)

"[I]n ruling whether to strike or vacate a prior serious and/or violent felony conviction allegation or finding under the Three Strikes law, on its own motion, 'in furtherance of justice' pursuant to Penal Code section 1385(a), or in reviewing such a ruling, 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, supra*, 17 Cal.4th at p. 161.)

Prior to denying defendant's *Romero* request the trial court noted it had read and considered the probation officer's report as well as defendant's *Romero* request and the People's response. These documents show defendant has the following criminal history: In 1996, a sustained juvenile adjudication for robbery; in 1997, separate convictions for misdemeanor theft and bank robbery; in 1999, a misdemeanor conviction for obstructing a public officer; and in 2000, convictions for theft and felon in possession of a firearm. For the 1999 and 2000 convictions defendant was sentenced to state prison and discharged from parole in 2004. Defendant committed the instant offenses on September 20, 2009.

Defendant argues the court erred in denying his *Romero* request because between his release from prison and the instant offenses more than five years have elapsed during which time he "married, had a child, started a business, and worked," thereby distinguishing himself "from those persons who fall within the spirit of the Three Strikes Law because of their unrelenting criminality." Additionally, defendant notes that in denying the request the trial court mistakenly misread the probation officer's report and considered that he had previously been

convicted of a violation of Vehicle Code section 2800.1, subdivision (a). The argument is not persuasive.

As to the court's misreading of the probation officer's report, which the court did, the error at this stage of the proceedings is waived. "[C]laims deemed waived on appeal involve sentences which, though otherwise permitted by law, were imposed in a procedurally or *factually* flawed manner." (*People v. Scott* (1994) 9 Cal.4th 331, 354, italics added.) Additionally, even though defendant was not convicted of having violated Vehicle Code section 2800.1, subdivision (a) does not mean he did not engage in the conduct proscribed by that section. The Vehicle Code conviction may have been dismissed pursuant to a plea bargain. Had defendant timely objected the error could have been investigated and addressed by the court. Consequently, defendant's failure to object waives the issue for appeal.

Defendant attempts to minimize the present driving offense as "a victimless crime" and a crime of a "relatively minor nature" when compared to the sentence imposed. We, like the trial court, do not so see it that way. That the crime was "victimless" is no thanks to defendant. He drove an estimated 90 miles per hour through an area consisting of commercial establishments and residences. He attempted to elude the pursuing officer by intentionally driving on the wrong side of the street, running a stop sign and turning a corner at a high rate of speed. Nor is the crime one of a "relatively minor nature" given the extremely dangerous manner in which defendant

committed the violation. That defendant managed to refrain from committing a felony for five years is not much of a mitigating factor given that most members of society never commit a felony. The fact that he married and started a business while commendable is more than offset by the seriousness of his present conduct. Simply put, defendant's conduct demonstrates that he is a danger to society and a proper subject for application of the Three Strikes law.

DISPOSITION

The judgment is affirmed.

BLEASE, Acting P. J.

We concur:

BUTZ, J.

HOCH, J.