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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

THE PEOPLE,

Plaintiff and Appellant,

v.

TRACY ALAN LAUBE,

Defendant and Respondent.

C067933

(Super. Ct. No.
62093292)

Defendant Tracy Alan Laube pleaded no contest to failing to update his annual registration as a sex offender. (Pen. Code, § 290.120, subd. (a).)¹ He also admitted allegations he had been convicted of one strike offense in 1987 and five strike offenses in 1992, including four sex crimes, against a single victim. The trial court granted a defense motion to strike five of the six strikes and sentenced defendant to six years in state prison, consisting of the upper term of three years for the failure to register, doubled for the remaining strike.

¹ Further unspecified statutory references are to the Penal Code.

The People appeal, arguing the trial court abused its discretion in striking the five prior serious felony convictions pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*). (§ 1238, subd. (a)(10).) But because they have not shown the trial court acted arbitrarily, capriciously, or beyond the bounds of reason, we shall affirm the judgment. (*People v. Williams* (1998) 17 Cal.4th 148, 162 (*Williams*); *People v. Rodriguez* (1994) 8 Cal.4th 1060, 1124 (*Rodriguez*).)

BACKGROUND

In 1987 defendant was convicted of armed robbery, a strike offense, when he stole a car from a car dealership sales manager after test driving it.

In 1992 defendant was convicted of five strike offenses committed in a single evening: four counts of forcible oral copulation and one count of burglary, committed for the purpose of gaining entry to commit the sex offenses. These crimes are described in our previous nonpublished opinion in *People v. Laube* (Nov. 15, 1993, C013049): defendant entered the home of a married, pregnant neighbor and forced her to orally copulate him. Angry that she was not "do[ing] it right," defendant repeatedly pulled the victim by her hair, moved her between the couch and the floor, straddled her chest, pried open her mouth, and threatened to hurt her, her son, and her unborn child if she failed to "satisfy him." As a result of these convictions, defendant is under a lifetime requirement to register as a sex offender. (§ 290 [hereafter, 290 registration].)

Between 2006, when defendant was released from prison on parole and notified of his registration requirement, and October 2009 defendant complied with his 290 registration requirement by either registering or updating his registration seven times. He last updated his registration on October 7, 2008, when he listed his address on King Road in Loomis.

Sometime before 2009 defendant absconded from parole, then returned to his home. On October 27, 2009, officers arrived at defendant's home on King Road and arrested him there on the outstanding parole hold. Defendant told officers he knew he was supposed to register within five days of his birthday on the preceding October 1 and officers "would be coming to get him any day now," but he also knew that when he appeared to register, he would be arrested on the parole violation, and he "didn't want to get arrested until he had finished doing some roofing work for his landlord."

Charged with one count of failing to register as a sex offender, defendant pleaded no contest and admitted allegations he had suffered six strike convictions. The People indicated their intention to seek a 25-years-to-life term, and defendant filed a *Romero* motion inviting the court to strike all (or, alternatively, all but one) of his prior strikes. The People opposed the motion in its entirety.

After a hearing and argument, the trial court granted defendant's *Romero* motion and exercised its discretion to strike five of the six prior strikes, leaving one of the forcible oral copulation strikes. The court's stated reasons for exercising

its discretion to strike (§ 1385) were that (1) the current offense did not involve any violence or threat of violence; (2) defendant had no prior 290 registration offenses and had dutifully registered multiple times; (3) the seriousness of the current offense was "relatively minor," in light of the fact that defendant was located at the same residence where he had previously registered; and (4) defendant's 1992 sex crimes strikes arose from a single evening of aberrant behavior. As to defendant's background, character, and prospects, the court found defendant was 53 years old, had served in the military, was honorably discharged, and had been a model prisoner, earning his GED and learning a trade while in prison. Defendant had been gainfully employed after his release from prison, until he was injured on the job. In light of the nature and circumstances of defendant's current and prior offenses, and his background, character and prospects, the court concluded defendant's sentence for the present crime fell outside the spirit of the "three strikes" law and that a life sentence would be unjust under the circumstances.

The court imposed the upper term of three years for the 290 registration offense, finding as factors in aggravation that defendant had engaged in violent conduct (Cal. Rules of Court, rule 4.421(b)(2)), his prior convictions were numerous (rule 4.421(b)(2)), he had served a prior prison term (rule 4.421(b)(3)), he was on probation or parole when the current crime was committed (rule 4.421(b)(4)), and his prior performance on probation or parole was unsatisfactory

(rule 4.421(b)(5)). The sentence was doubled by virtue of the remaining strike, for an aggregate sentence of six years.

DISCUSSION

The People appeal, contending the trial court abused its discretion by striking the prior serious felony convictions defendant suffered in 1992. (See *Williams, supra*, 17 Cal.4th 148, 164.) We disagree.

Section 1385, subdivision (a) authorizes a trial court to act on its own motion to dismiss a criminal action "in furtherance of justice." This power includes the ability to strike prior conviction allegations that would otherwise increase a defendant's sentence. (*People v. Garcia* (1999) 20 Cal.4th 490, 496 (*Garcia*).)

In deciding 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" (§ 1385, subd. (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. (*Williams, supra*, 17 Cal.4th at p. 161.) The "overarching consideration" in deciding whether to strike a prior conviction is the defendant's sentence, "because the underlying purpose of

striking prior conviction allegations is the avoidance of unjust sentences. [Citation.]” (*Garcia, supra*, 20 Cal.4th at p. 500.) Although “a defendant’s recidivist status is undeniably relevant, it is not singularly dispositive.” (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 973 (*Alvarez*).)

A court’s discretionary decision to dismiss or to strike a sentencing allegation under section 1385 is reviewable for abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 373 (*Carmony*).) “‘The burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.’ [Citation.]” (*Alvarez, supra*, 14 Cal.4th at pp. 977-978.) The standard of review for abuse of discretion is “extremely deferential and restrained” (*id.* at p. 981) and “asks in substance whether the ruling in question ‘falls outside the bounds of reason’ under the applicable law and the relevant facts [citations].” (*Williams, supra*, 17 Cal.4th at p. 162; see *Rodrigues, supra*, 8 Cal.4th at p. 1124 [abuse of discretion requires a showing that the court “exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice”].) A decision will not be reversed merely because reasonable people might disagree; an appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.

(*Carmony, supra*, 33 Cal.4th at p. 377; *People v. Philpot* (2004) 122 Cal.App.4th 893, 904-905.)

Here, the record reflects that the court's exercise of its sentencing authority involved a thoughtful, fact-bound inquiry, taking all relevant factors, including defendant's criminal past and public safety, into due consideration (see *Alvarez, supra*, 14 Cal.4th at p. 981), and it ruled only after reviewing numerous legal authorities cited by the parties.

The People argue on appeal that the court abused its discretion by characterizing defendant's current crime as an offense that "did not involve violence or a threat of violence" and was "relatively minor" in view of his prior 290 registration compliance and location within 15 days of failing to register, because the "whole purpose of the Three Strikes Law is to require a greater punishment of anyone who has committed any felony after having been convicted of serious and/or violent felonies," and absconding from parole thwarted the purpose of the registration laws.

The trial court did not abuse its discretion in weighing whether the current offense involved serious or violent conduct in its decision whether to strike one or more priors.

(*Williams, supra*, 17 Cal.4th at p. 161; *Carmony* (2005) 127 Cal.App.4th at pp. 1075-1079; see also *People v. Nichols* (2009) 176 Cal.App.4th 428, 436 (*Nichols*).) Reviewing courts have refused to find an abuse of discretion when the current crime did not involve violence and/or prior conviction allegations were remote in time and did not involve violence.

(See, e.g., *Alvarez, supra*, 14 Cal.4th at p. 981; *Garcia, supra*, 20 Cal.4th at p. 503.) Nothing in the record in this case suggests that the trial court's analysis was so irrational or arbitrary as to warrant reversal. We cannot conclude the trial court acted irrationally in viewing defendant's failure to update his registration as a relatively minor offense in light of the fact that he had registered previously, and at the same residence where he was located approximately 15 days after the annual violation was noted by authorities, and he had no prior section 290 violations. (See *Nichols, supra*, 176 Cal.App.4th at pp. 436-437 [contrasting failure to register after changing residence to failing to update registration at the same address].) Although defendant had absconded from parole for some period, he returned to his registration residence, was waiting for law enforcement, was cooperative, and admitted violating the registration requirement.

Nor did the trial court abuse its discretion in concluding that defendant fell somewhat outside the three strikes scheme spirit, based upon its findings that defendant's strikes were remote in time and the stricken priors also arose from a single evening of aberrant behavior; it doubled defendant's aggravated sentence for the 290 registration violation in accordance with the "strike two" provision of the three strikes law. (Cf. *Garcia, supra*, 20 Cal.4th at p. 503.)

Aside from asserting that the court should view defendant's age as a neutral factor, the People do not contend the court's conclusions as to defendant's background, character, and

prospects -- from his having served in the military and receiving an honorable discharge, having been a model prisoner while in prison, earning his GED and learning a trade, and having been gainfully employed after release from prison, until he was injured on the job -- are factually unsupported. Rather, their argument suggests the trial court failed to give due weight to countervailing circumstances. Because the scope of our review on appeal from the court's ruling on a section 1385 motion is "extremely deferential and restrained" (*Alvarez, supra*, 14 Cal.4th at p. 981), we do not ask whether the trial court should have weighed the facts and circumstances differently. We ask only if "the ruling in question 'falls outside the bounds of reason'" in light of the "applicable law and the relevant facts." (*Williams, supra*, 17 Cal.4th at p. 162.)

Here, it did not. The People have not met their burden of showing that the trial court's ruling was arbitrary, capricious, absurd, and beyond the bounds of reason resulting in a miscarriage of justice.

DISPOSITION

The judgment is affirmed.

We concur: RAYE, P. J.

MAURO, J.

HOCH, J.