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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

THE PEOPLE,

Plaintiff and Respondent,

v.

EDWARD FRANCIS SCIOSCIOLE,

Defendant and Appellant.

C068877

(Super. Ct. No.
62098019)

This case comes to us pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We affirm the judgment.

On April 7, 2010, defendant Edward Francis Sciosciolo walked into a Wells Fargo bank, approached the bank service manager at a sit-down teller station, pulled a piece of paper from his pocket, and held it in front of the manager. The paper read, "This is a robbery." Feeling threatened and frightened, the manager opened her money drawer, removed \$3,810, and pushed it toward defendant. While she was collecting the money, defendant told her he wanted all of her money, did not want any

tracking or dye packs, and she was not to try any "funny business" or to set off the alarm. Defendant took the money, put it into a black plastic bag he had with him, and put it under his sweatshirt. He then got up and walked out of the bank.

As soon as defendant turned to leave, the manager hit the alarm and alerted another teller and two bankers that she had just been robbed. The bankers followed defendant to the door. One of the bankers saw defendant run in the direction of the nearby Heritage Inn.

A video recording from the bank's surveillance camera showed defendant passing the demand note to the manager, taking the money, and turning to leave the bank. The manager and one of the bankers both identified defendant in a photo lineup shortly after the robbery.

On the same day as the robbery, a police detective went to the Heritage Inn. After verifying that defendant had checked into the inn the day before, the detective searched his room. The room had been cleaned but not re-rented. The detective found a crumpled black sweatshirt stuffed underneath the bathroom sink, and a light gray knit cap and an empty bottle of Vaseline in between the bed mattress and box springs. The sweatshirt appeared very similar to the sweatshirt defendant wore during the robbery. Defendant had also worn a gray knit cap or beanie and jeans during the robbery.

Detectives then went to a residence to which defendant had a connection and contacted defendant. There was laundry being

done in the laundry room. The detectives stopped the cycles of both the washer and dryer, examined the clothing inside, and found a pair of jeans and a couple of dark-colored sweatshirts. In a nearby trash can, detectives found a wadded, black, torn-open trash bag that they noted was consistent with the type used by the janitorial staff at the Heritage Inn. They also located a gray cap, consistent in appearance to the one defendant wore during the robbery, on a nearby shelf.

Defendant was arrested. Thereafter, the bank service manager and one of the bankers both positively identified defendant in an in-field show-up.

The jury found defendant guilty of second degree robbery by means of force and fear. (Pen. Code, § 211.)¹ Defendant thereafter admitted he had three prior serious felony convictions (§ 667, subd. (a)), each of which qualified as prior strikes (§ 1170.12), and had served a prior prison term (§ 667.5, subd. (b)).

Prior to sentencing, defendant filed a motion pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*) asking the trial court to dismiss two of his prior strike convictions. After hearing argument from counsel, the trial court denied defendant's *Romero* motion and sentenced him to 30 years to life as follows: a third strike sentence of 25 years to life for the second degree robbery, and a

¹ Further undesignated statutory references are to the Penal Code.

consecutive five years for one of the prior convictions. The other two five-year terms (for the other prior convictions) and the one-year prior prison term enhancement were all stayed.

Defendant appeals. Counsel filed an opening brief that sets forth the facts of the case and asks this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief.

Defendant's supplemental brief consists of numerous exhibits such as his resume, his certificate of appointment as a sergeant in the United States Air Force, some personnel records, school transcripts, a letter of apology written to the victims of his 2004 robberies, and a written statement from defendant to this court emphasizing points in his background and character and seeking "relief" from the "three strikes" law. We construe these materials to be a challenge to the trial court's denial of his *Romero* motion. Accordingly, we address this issue, in addition to undertaking a review of the record as required by *Wende*.

A sentencing court has discretion under section 1385 to dismiss a prior strike allegation. (*Romero, supra*, 13 Cal.4th 497.) However, dismissal of a strike is a departure from the sentencing norm. "In reviewing for abuse of discretion, we are guided by two fundamental precepts. First, "[t]he 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.] Second, 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.’” [Citation.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.” (*People v. Carmony* (2004) 33 Cal.4th 367, 376-377.)

Here, defense counsel presented a lengthy motion in support of dismissing two of defendant’s prior strikes, and provided the trial court with most of the exhibits defendant now provides, and more, to explain defendant’s background and to highlight defendant’s positive characteristics and prospects.² In addition to the several letters defendant wrote to the trial court that were submitted with the motion, and defendant’s statement and

² Defense counsel’s motion did not attach defendant’s letter of apology to the victims of his 2004 robberies, but it did include several letters written by defendant to the trial court which explained that, once arrested for those robberies, defendant readily admitted his guilt and cooperated with police. Additionally, although defense counsel provided the trial court with defendant’s college transcripts, counsel did not attach defendant’s high school transcripts to the motion. However, the probation officer’s report notes that defendant graduated from high school.

information regarding his background that were included in the probation officer's report, defendant also made an oral statement to the trial court in support of the *Romero* motion at the time of the hearing.

The trial court confirmed it had reviewed the documents "thoroughly," but after acknowledging it had discretion to dismiss defendant's prior strikes if it found him outside the spirit of the three strikes law and noting some positive aspects of defendant's background, it declined to exercise that discretion. In doing so, the trial court detailed defendant's 1997 prior felony conviction for inflicting corporal injury on a spouse/cohabitant and his 2001 felony assault on his girlfriend by means of force likely to produce great bodily injury, which he committed while still on probation. The court then noted that while he was still on probation for the assault, he committed his first strike, which was a robbery at a hair salon wherein he held a knife to the employee's throat to obtain the money. The next day, he did the same thing to a clerk at a bookstore. Defendant was sentenced to prison for five years eight months. Thereafter, he violated parole and was returned to custody within two months. Within three months of his second release on parole, he committed the current offense. The court concluded that, since defendant's discharge from the Air Force in the 1980's, his history had been "dismal." Viewing all the information presented about defendant, the court concluded he was a recidivist, violent offender who did fall within the spirit of the three strikes law.

On this record, we find no abuse of discretion.

We have also undertaken an examination of the entire record and find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

_____ RAYE _____, P. J.

We concur:

_____ MAURO _____, J.

_____ HOCH _____, J.