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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Tehama)

THE PEOPLE,

Plaintiff and Respondent,

v.

AARON TYLER GLYNN,

Defendant and Appellant.

C069407

(Super. Ct. No. NCR79468)

Defendant Aaron Tyler Glynn pled no contest to unlawfully taking or driving a vehicle and admitted two prior serious felony allegations under the three strikes law. (Pen. Code, §§ 667, 1170.12.) The trial court denied defendant's *Romero*¹ motion to strike a prior serious felony conviction and sentenced him to 25 years to life in prison.

On appeal, defendant contends the trial court abused its discretion in denying his *Romero* motion and his sentence

¹ *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

constitutes cruel and unusual punishment. We find no merit in either contention and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On June 13, 2010, defendant took a pickup truck that did not belong to him and led law enforcement authorities on a high-speed chase on a highway for 10 to 11 miles. Defendant reached speeds of 110 miles per hour and at times drove into the oncoming lane. He lost control of the truck and slid off the road after three of his tires were deflated by a "hollow spike strip" that an officer placed on the road in his path.

An information charged defendant with four felonies: unlawful taking or driving a vehicle, receiving stolen property, evading an officer, and possession of a controlled substance. Defendant pled no contest to the unlawful taking or driving a vehicle. Under the three strikes law, defendant also admitted two prior 2007 convictions for serious felonies.² (Pen. Code, §§ 667, 1170.12.)

Before sentencing, defendant filed a *Romero* motion to strike one of his admitted prior convictions under the three strikes law. At sentencing, defendant acknowledged his "horrendous" and "dismal" record by age 30 and that his conduct in driving 110 miles per hour with officers chasing him posed "the risk of death, great bodily injury, violence." Defendant

² Defendant was convicted during a single proceeding of three counts of residential burglary pursuant to Penal Code section 460, subdivision (a) and admitted two of the three counts at the time of his plea.

contended, however, that he did not fit "the paradigm or the model that the three strikes law was created for" and was "not the kind of person [who] has gone out and gone about beating people or striking people or being a violent person." Defendant cited as mitigating factors his drug addiction, abuse, and dysfunction, as well as the fact that the residential burglaries constituting his prior serious felony strikes "arose from a single period of aberrant behavior where he served a single prison term."

The People, in turn, pointed to defendant's lengthy record of felonies, prison sentences, and parole violations and argued he was "a poster child for why we have the three strikes law."

The trial court acknowledged it was "not a real fan of the three strikes law when it applies to new convictions, not serious and violen[t] felonies," but was required to follow the three strikes law. The trial court listed "three serious and, frankly, insurmountable problems" to granting defendant's *Romero* motion.

First, the court noted defendant had "18 felony convictions, not including the strike convictions" in 11 years and for most of that time, defendant was in custody, in jail, or in prison. "[T]hat's 18 felony convictions in a very limited period of time where he is putting society at risk." Second, defendant had three previous convictions for evading a police officer, and although he was not convicted of that crime in the present case despite having been so charged, the ongoing pattern

showed his tendency to put people at risk on the roadways and to "escape responsibility for his actions."

Third, the trial court found hollow defendant's desire for "one last chance" because defendant had "just ended doing an 80-month term and was out on parole and as he had in prior parole situations, he violated parole once again." The court stated: "There just is nothing to suggest to the Court, other than sheer optimistic hope, that the defendant might have learned from this situation, because his record demonstrates that he hasn't learned a thing so far. Unfortunately, this defendant falls into that category where he's in the spirit of the three strikes law. He fits into that category where there just really is no good justification to avoid implication of that law, despite how sad it might be, despite the defendant's history, despite frankly some personal reluctance by a judge to impose that term, the law simply requires it under the circumstances of this case."

The trial court denied the *Romero* motion. Defendant timely appealed.

DISCUSSION

I

Romero Motion

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. (Pen. Code, § 1385; *People v. Williams* (1998) 17 Cal.4th 148, 161; *People v. Superior Court (Romero)*, *supra*, 13 Cal.4th at

pp. 529-530.) In deciding whether to do so, 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*, at p. 161.)

A trial court's ruling on a motion to strike a prior strike is reviewed for abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 375.) Defendant has the burden of establishing that a trial court's denial of such motion was arbitrary or irrational, such as where the trial court was not aware of its discretion, considered impermissible factors, or imposed a sentence that is absurd under the particular facts of the case. (*Id.* at pp. 376-377.)

Defendant argues the trial court abused its discretion in refusing to strike a prior serious felony conviction because none of his felony convictions involved violence, he was convicted of the prior admitted strikes involving residential burglaries during a single proceeding, and no residents were present when those burglaries occurred. Defendant also argues his long history of substance abuse and neglect as a child should mitigate in his favor and that, without the prior strikes against him, his potential sentence of as many as 13 years in prison would have been a more just punishment.

In reaching its decision, the trial court employed the factors required under *Williams* by considering the nature and circumstances of the present felony conviction and the prior admitted strikes, and defendant's background, character, and prospects.

In considering defendant's present conviction and prior strikes, the trial court observed that defendant chose to engage in his most recent criminal behavior with the knowledge he already had prior strikes and thus faced "the consequences of any future conviction." The trial court considered the present conviction and prior strikes in the context of defendant's voluminous felony record and lengthy periods of incarceration and concluded "defendant is out of control when he is not in custody." The trial court also cited defendant's pattern of evading responsibility for his criminal actions, noting that defendant had three prior convictions for recklessly evading a pursuing officer, and was charged with -- although not convicted for -- that same crime in the present case.

In considering defendant's background, character, and prospects, the trial court found defendant's criminal recidivism and lack of personal reform or rehabilitative efforts placed him squarely within the ambit of the three strikes law, "despite how sad it might be, despite the defendant's history, despite frankly some personal reluctance by a judge to impose that term."

Defendant argues that had the trial court dismissed a strike, he still would have been subject to a term of up to 13

years in prison, which would have served the "furtherance of justice." Defendant cites *People v. Bishop* (1997) 56 Cal.App.4th 1245, 1249 for the proposition that the "sentencing court may not simply consign all recidivist offenders to prison for life in order to carry out the perceived intent of the three strikes law while ignoring relevant individualized mitigating factors." In *Bishop*, the court held that the trial court, in dismissing defendant's two prior strikes, did not act arbitrarily or irrationally in taking into account the mild nature of defendant's present crime (petty theft of six video cassettes), his age (50), the length of time he would be incarcerated and unable to harm the public without the strikes (12 years), and the remoteness of his prior strikes (17 to 20 years in the past). (*Bishop*, at pp. 1248, 1250-1251.)

The facts of *Bishop* are distinguishable. By his own admission, defendant here put people's lives at risk of death or great injury by driving 110 miles per hour to evade the officers pursuing him. Defendant was 30 at the time of sentencing, and had managed to be convicted of 18 other felonies in addition to his strike convictions in the prior 11 years, while for much of that time being incarcerated. According to the trial court, such a record showed "defendant is out of control when he is not in custody." Finally, defendant's prior strikes occurred just three years before his conviction for unlawfully taking the pickup truck. Even if defendant's strikes had been more distant, under Penal Code section 667, subdivision (c)(3), "[t]he length of time between the prior felony conviction and

the current felony conviction shall not affect the imposition of sentence."

Against this backdrop, the trial court considered defendant's "sad" individual history and expressed discomfort with the tough sentencing law it was obligated to follow. The court duly and carefully considered the evidence under the appropriate guiding principles and concluded it would not be proper under the law to grant defendant's motion to strike a prior strike. Under *Romero*, it is "[p]aramount" that the court consider both "the constitutional rights of the defendant, and the interests of society represented by the People, in determining whether there should be a dismissal." (People v. Superior Court (Romero), supra, 13 Cal.4th at p. 530.) Here, the trial court clearly weighed both defendant's personal rights and the public's need for protection. On the record before it, the trial court's decision was neither arbitrary nor irrational. We find no abuse of discretion.

II

Cruel And Unusual Punishment

Defendant contends his sentence constitutes cruel and unusual punishment under the Eighth Amendment to the United States Constitution. Defendant bases his argument on a sentence for violation of Health and Safety Code section 11378, possession of a controlled substance for sale. This argument is not directed toward the crime for which defendant was convicted. It is not even directed toward a crime for which defendant was

charged. Because the argument totally misses the mark, we decline to consider it.

DISPOSITION

The judgment is affirmed.

_____ ROBIE _____, Acting P. J.

We concur:

_____ BUTZ _____, J.

_____ DUARTE _____, J.