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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Tehama)

THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
CARL RANDOLPH TEHADA, SR.,  
  
Defendant and Appellant.

C069473  
  
(Super. Ct. No. NCR80871)

Defendant Carl Randolph Tehada was convicted of felony evading a peace officer (Veh. Code, § 2800.2, subd. (a))<sup>1</sup> and admitted he had suffered two prior strike convictions (Pen. Code, § 667, subds. (b)-(i)). Defendant was sentenced to a term of 25 years to life. On appeal he contends: (1) section 2800.2 creates an impermissible mandatory presumption; (2) the trial court abused its discretion by not dismissing his prior strike conviction pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*); (3) the trial court erred in calculating his presentence custody credits

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

based on the version of Penal Code section 4019 in effect at the time of his sentencing; and, (4) he is entitled to additional presentence custody credits, because prospective application of the conduct credit provisions of the Realignment Act violates equal protection principles. The People properly concede there was an error in calculating defendant's presentence custody credits based on the version of Penal Code section 4019 in effect at the time of defendant's sentence. We shall modify the award of credits and order the abstract of judgment be amended. As modified, we affirm the judgment.

#### RELEVANT FACTUAL BACKGROUND

##### Current Offense

Shortly before midnight, Officer Fernandez was on patrol when he saw defendant driving a black Corvette. Defendant made an abrupt stop, then accelerated to a high rate of speed heading out of town. Fernandez was in a marked police car, equipped with emergency lights and siren and was wearing his full duty uniform. He followed defendant and noticed the car's front windshield was smashed, with cracks running throughout. Driving with a cracked windshield is a violation of the Vehicle Code, so Fernandez activated his emergency lights to initiate a traffic stop. Defendant accelerated away from Fernandez, traveling between 35 to 40 miles per hour. He turned into a parking lot and sped through the exit of a fast food restaurant at approximately 30 miles per hour. Defendant continued to accelerate away from Fernandez, traveling approximately twice the speed limit. The area has both commercial businesses and residences. Most of the businesses in the area were closed and Fernandez did not see any pedestrian traffic. Defendant came to a "T" intersection across from a trailer park. He tried, unsuccessfully, to negotiate the turn, lost control of the vehicle, collided into a concrete barrier, slid off the road and stopped within 10 feet of an occupied trailer. As Fernandez parked his vehicle, defendant was exiting his car. Fernandez identified himself as a police officer and ordered defendant to stop. Defendant fled on foot. Fernandez pursued and detained defendant.

### Romero Motion - Relevant Background

Defendant's criminal history began in 1973, when he sustained three misdemeanor convictions. In 1975, he sustained his first felony conviction for second degree burglary. In 1978, he sustained his first strike conviction for first degree burglary. He sustained another felony conviction in 1983 for assault with a deadly weapon. In 1986, defendant sustained his second strike conviction for attempted murder. He was sentenced to nine years in prison and paroled in 1991. In 1994, he violated parole and was returned to prison. Again in 1995 he violated parole and was returned to prison. In 1996 he was convicted of misdemeanor drunk driving and driving without a license. Less than one year into his probationary term, he violated probation. In 1997, he committed felony spousal abuse. He received a suspended sentence, but was then sent to prison in 2000. In 2003, he violated parole and was returned to prison. From 2008 to 2010, he had four misdemeanor convictions, two for drunk driving, one for possession of marijuana, and one for driving on a suspended license.

Defendant admitted he has an alcohol problem, drinking every day to the point of intoxication. He also admitted to having had an addiction to methamphetamine and that he continued to smoke marijuana daily. In the current offense, defendant admitted he was drunk and had smoked marijuana. Defendant's blood-alcohol level was 0.07 percent and he tested positive for THC. Defendant completed his education while in prison and holds an associate of arts degree in psychology. Defendant was injured on the job four years ago and earns \$1,800 in worker's compensation.

### PROCEDURAL HISTORY

Defendant was charged with evading a peace officer with willful and wanton disregard for the safety of persons or property (§ 2800.2, subd. (a)). It was also alleged defendant had suffered two prior strike convictions. (Pen. Code, § 667, subds. (b)-(i).) Defendant admitted the prior strike convictions and a jury found him guilty of felony evading a police officer.

At sentencing, defendant requested the court exercise its discretion under *Romero* and strike either the 1986 or 1978 prior strike conviction. Defendant argued both strikes were extremely remote in time, he had not received a prison sentence for the 1978 strike and in the 1986 strike, he was acting as a vigilante, “attempting to exercise what he believed to be the appropriate judgment on a child molester.” Defendant also indicated he suffers from a mental condition which did not result in a total defense. He claimed immediately prior to the offense he had been victimized by attempted carjackers and was extremely paranoid, believing the officer was the robber. He noted the damage to the property was “extremely insignificant,” there were no individuals present at the time of his flight and the pursuit was extremely brief. The People opposed the motion.

The court reviewed the probation report, considered the arguments of counsel and the evidence presented at trial. The court noted although the offenses were remote in time, defendant never went a substantial period of time without suffering a conviction. As to the attempted murder, the court noted defendant was returned to prison shortly after being released on parole and had three subsequent violations of parole. Accordingly, the court did not find defendant fell outside the spirit of the three strikes law and denied the motion to strike.

Defendant was sentenced to 25 years to life, granted 268 actual days credit, and 52 conduct credit days for a total of 320 days of presentence credit.

## DISCUSSION

### I

Section 2800.1 defines as a misdemeanor the act of willfully fleeing from a pursuing peace officer, if certain conditions are met. Section 2800.2, subdivision (a), elevates the crime to a felony if “the pursued vehicle is driven in a willful or wanton disregard for the safety of persons or property.” Section 2800.2, subdivision (b), provides: “For purposes of this section, a willful or wanton disregard for the safety of persons or property includes, but is not limited to, driving while fleeing or attempting to

elude a pursuing peace officer during which time either three or more violations that are assigned a traffic violation point count under Section 12810 occur, or damage to property occurs.”

Defendant contends section 2800.2, subdivision (b), creates an impermissible mandatory presumption by equating the commission of three traffic violations with “willful or wanton disregard,” thereby lowering the People's burden of proof. This court and other courts have previously rejected this claim. (*People v. Williams* (2005) 130 Cal.App.4th 1440, 1444-1446; see *People v. Pinkston* (2003) 112 Cal.App.4th 387; *People v. Laughlin* (2006) 137 Cal.App.4th 1020.) Defendant is “aware that the few appellate cases that have directly considered whether Vehicle Code section 2800.2, subdivision (b), creates an unconstitutional mandatory presumption have found that it does not.” He contends, however, that those cases were wrongly decided. We continue to believe our decision in *People v. Williams, supra*, is sound and decline defendant’s implicit invitation to reconsider it. Section 2800.2, subdivision (b), merely sets forth alternative definitions of “willful or wanton disregard” and therefore does not create a mandatory presumption. (*People v. Williams, supra*, 130 Cal.App.4th at pp. 1444-1446.)

## II

Defendant contends the trial court abused its discretion when it denied his *Romero* motion. 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.)

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.*) Moreover, in the absence of an affirmative record to the contrary, we presume the court considered all of the relevant factors in exercising its discretion. (*People v. Myers* (1999) 69 Cal.App.4th 305, 310.)

Defendant attempts to minimize the present driving offense arguing the property damage was "insignificant" and no one was present to be injured. That the property damage was relatively small and no one was injured is no thanks to defendant. He drove at high speeds through an area of commercial establishments and residences. He attempted to navigate a sharp turn across from a trailer park at high speed, and only through good fortune did he avoid crashing into an occupied trailer. While defendant's strike convictions are remote in time, he has consistently engaged in criminal conduct since 1973 apparently unable to go for more than about three years without committing another offense, probation violation, or parole violation. Simply put, defendant's conduct

demonstrates that he is a danger to society and a proper subject for application of the three strikes law.

The record here makes clear the court was aware of its discretion in this matter and the legal standards governing the exercise of that discretion. The court considered the parties' arguments, the probation report, and the evidence presented at trial. All of the facts defendant now claims as mitigation were included in the record before the court. Defendant points to nothing in the record which suggests the court did not properly consider the nature and circumstances of defendant's present and past felonies, his background, character, and prospects. On this record, there was no abuse of discretion.

### III

Defendant contends, and the People properly concede, the trial court erred in calculating his presentence custody credits. Defendant was sentenced on October 3, 2011. Under the version of Penal Code section 4019 in effect at the time defendant was sentenced, defendant was entitled to an award of two days conduct credit for every four days served. (Former § 4019, as amended by Stats. 2010, ch. 426, § 2.) Defendant served 268 actual days. Thus, he was entitled to 134 days of conduct credit, for a total of 402 days of presentence custody credits.

### IV

Defendant argues that the prospective application of the conduct provisions of the Realignment Act violates his right to equal protection under the law. This claim was rejected by the California Supreme Court in a case decided after the conclusion of briefing. (*People v. Lara* (2012) 54 Cal.4th 896, 906, fn.9.) Applying *Lara*, we reject defendant's claim.

### DISPOSITION

The judgment is modified to award defendant 268 actual days credit, 134 days of conduct credit, for a total of 402 days of presentence custody credits. The trial court is directed to prepare an amended abstract of judgment reflecting the modifications and to

forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

BLEASE \_\_\_\_\_, Acting P. J.

We concur:

ROBIE \_\_\_\_\_, J.

DUARTE \_\_\_\_\_, J.