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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

JEREMY LEE HOSMER,

Defendant and Appellant.

C070105

(Super. Ct. Nos. CM033602,
CM034139)

Defendant Jeremy Lee Hosmer pled no contest to possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)) in Butte County Superior Court case No. CM033602 and failure to appear (Pen. Code, § 1320, subd. (b))¹ in case No. CM034139, as well as admitting a strike allegation in both cases (§§ 667, subds. (b)-(i), 1170.12). The trial court denied defendant's section 1385 motion to dismiss the strike allegation. Sentencing him in both cases, the trial court imposed a state prison term of seven years and four months with 174 days of presentence custody credit (116 actual and 58 conduct).

¹ Undesignated statutory references are to the Penal Code.

On appeal, defendant contends it was an abuse of discretion for the trial court to deny his motion to dismiss the strike. In a supplemental brief, he asserts that he is entitled to additional conduct credits pursuant to the Criminal Justice Realignment Act of 2011 (Stats. 2011, ch. 15, § 482, Stats. 2011, ch. 39, § 53, and Stats. 2011, 1st Ex. Sess., ch. 12, § 35; hereafter Realignment Act) as a matter of equal protection under the law. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Crimes

On July 3, 2010, at about 10:30 p.m., Butte County Sheriff's deputies went to a Magalia residence looking for Christopher Gamer, a parolee at large. As the deputies entered the driveway, they saw defendant leaning inside the driver's side window of a vehicle. Defendant started running and throwing objects from his left pants pocket after the deputies announced their presence. Defendant then ran in front of a vehicle and fell to the ground. He tried to reach into his pants pocket, but was struck by a deputy who thought he was reaching for a weapon. Defendant stopped resisting and was handcuffed.

Deputies found defendant's wallet, a folding knife, and rolling tobacco in the driveway where defendant threw the items. A plastic baggie containing 12.25 grams of methamphetamine was found underneath the vehicle, about two feet from where defendant was detained. Defendant denied any knowledge of the methamphetamine. His blood later tested positive for methamphetamine.

Defendant was arrested and booked in the Butte County jail. He was charged on July 8, 2010. Defendant was released on his own recognizance on July 28, 2010, and failed to appear in court on January 4, 2011. The trial court then issued a bench warrant the following day. Defendant again failed to appear in court on February 2, 2011.

Sentencing

Defendant was born in February 1980. His criminal career started with an adjudication for burglary (§ 459) and a juvenile wardship in 1992. His wardship

continued until it was terminated in October 1998. During that time, defendant sustained two juvenile adjudications for possession of a controlled substance (Health & Saf. Code, § 11377) and one for possession of drug paraphernalia (Health & Saf. Code, § 11364).

Defendant sustained his first adult criminal conviction in September 1998, when he was convicted of assault with a deadly weapon (§ 245, subd. (a)(1)) and sentenced to three years in prison. He was paroled in March 2000, but violated parole in November 2000 and returned to prison. In November 2000, defendant was convicted of felon in possession of a firearm (former § 12021, subd. (a)(1)) and sentenced to a three-year prison term. Defendant sustained two parole violations after being released in June 2002. In February 2004, defendant sustained another felon in possession of a firearm conviction and was sentenced to a six-year prison term. In 2008, defendant was convicted of felony theft or unauthorized use of a vehicle (Veh. Code, § 10851, subd. (a)) and felony evading an officer (Veh. Code, § 2800.2, subd. (a)) and sentenced to three years and eight months in state prison. He was on parole when he committed the current offense.

Defendant started using methamphetamine and drinking alcohol when he was nine and was an admitted addict. He had been accepted into the Salvation Army in Chico and a rehabilitation program called The Well Ministry of Rescue. Defendant fled the deputies because he was scared when they showed up, and did not appear in court because he was distraught after his “street father” unexpectedly died. He maintained that he had been sober and going to NA meetings, but started using again after the death of his father figure. Defendant thought prison would not help him, while probation would let him keep his mind straight as he worked to address his addiction.

In denying defendant’s motion to dismiss the strike allegation, the trial court noted defendant’s extensive criminal record, the danger associated with his prior convictions for felon in possession of a firearm and evading an officer, his repeated failures on parole, the amount of drugs in his possession, and his being caught at a house where a parolee was being searched.

DISCUSSION

I

Defendant contends it was an abuse of discretion for the trial court to deny his section 1385 motion to dismiss the strike allegation. We disagree.

The three strikes law “establishes a sentencing requirement to be applied in every case where the defendant has at least one qualifying strike, unless the sentencing court “conclud[es] that an exception to the scheme should be made because, for articulable reasons which can withstand scrutiny for abuse, this defendant should be treated as though he actually fell outside the Three Strikes scheme.” [Citation.]” (*People v. Carmony* (2004) 33 Cal.4th 367, 377.)

A trial court may properly exercise its discretion to strike a defendant’s prior strike or strikes under section 1385 only if it finds that “in light of the nature and circumstances of the present felonies and the prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the [three strikes] 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* (1998) 17 Cal.4th 148, 161.)

When a trial court decides not to strike a prior strike, we review its decision under the abuse of discretion standard. (*People v. Carmony, supra*, 33 Cal.4th at p. 375.) In the context of sentencing decisions, “a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.” (*Id.* at p. 377.)

Defendant asserts his strike conviction was remote because it occurred 12 years before sentencing, when he was 18 years old. He notes his current convictions are for nonviolent offenses, and contends that his record reflects a long struggle with drugs and alcohol. Claiming he sobered up and made his court dates from the time of his arrest

until his father figure died, defendant contends that a lesser sentence is warranted for comparatively minor crimes.

Defendant has a history of nearly continuous offending. His life is a revolving door between prison, brief periods on the street, until his inevitable return to prison for a parole violation or a new offense. Although his current felonies are comparatively minor, as felonies go, he has a history of dangerous behavior. As the trial court correctly noted, felon in possession of a firearm is a particularly serious offense in light of defendant's prior conviction for assault with a deadly weapon. Likewise, while not a violent crime per se, felony evading an officer involves necessarily dangerous behavior. (See Veh. Code, § 2800.2, subd. (a) [felony evading requires a "willful or wanton disregard for the safety of persons or property"].) In light of his current conviction for possession of a substantial amount of methamphetamine and his admitted use of the drug after his arrest, defendant's claim that he is working to address his addiction rings hollow.

Defendant is a lifelong criminal with an extensive record of dangerous conduct. The trial court was well within its discretion to deny his motion to dismiss the strike allegation.

II

Defendant committed the crimes for which he was convicted on July 3, 2010, and February 2, 2011. He was sentenced on November 9, 2011.

The trial court calculated defendant's conduct credits under the September 28, 2010, revision of the presentence credit law, which provided that a defendant with a prior serious felony conviction was entitled to two days of conduct credit for every four days of presentence custody. (Former §§ 2933, 4019, as amended by Stats. 2010, ch. 426).)

The Realignment Act amended the law, entitling defendants to two days of conduct credits for every two days of presentence custody. (§ 4019, subs. (b), (c), (f).) The award of credits is not reduced by a defendant's current or prior conviction for a

serious felony. This provision applies prospectively, to defendants serving presentence incarceration for crimes committed on or after October 1, 2011. (§ 4019, subd. (h).)

Defendant argues that the prospective application of the conduct credit 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 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 affirmed.

BLEASE, Acting P. J.

We concur:

BUTZ, J.

HOCH, J.