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

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH LUIS HERNANDEZ,

Defendant and Appellant.

C070996

(Super. Ct. No. 10F04515)

Defendant Joseph Luis Hernandez appeals his convictions for recklessly evading a peace officer (Veh. Code, § 2800.2, subd (a)) and resisting a peace officer (Pen. Code, § 148, subd. (a)(1)).¹ He requests this court review the sealed transcript of the in camera hearing on his *Pitchess*² motion to determine if the trial court properly denied the motion.

¹ Undesignated statutory references are to the Penal Code.

² *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

Defendant also contends the trial court abused its discretion in refusing to strike his prior strike conviction under *Romero*.³ We find no error and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Early in the morning of July 11, 2010, Sacramento County Sheriff's Deputies Pfeifer and Peyton were on duty in their marked patrol car. Defendant drove past them in a car without license plates. The deputies followed the car to initiate a traffic stop. As they followed, defendant drove through an intersection without stopping at the stop sign. The deputies activated their overhead lights and siren. Instead of stopping, defendant's car sped away. The deputies chased the car for seven and a half miles. During the pursuit, defendant drove through residential neighborhoods, reaching speeds as high as 93 miles per hour, and on the freeway reaching speeds of 114 miles per hour. Defendant also failed to stop at numerous stop signs and red lights. Eventually, defendant drove off the roadway. When the car stopped, defendant fled on foot. The deputies ran after defendant, repeatedly identifying themselves as deputy sheriffs and ordering defendant to stop. Pfeifer caught defendant and tackled him to the ground. While on the ground, defendant continued to resist. Peyton arrived on the scene and hit defendant on the back of the head with his flashlight. The deputies were then able to handcuff defendant. The deputies later learned defendant's driving privileges had been suspended.

An information charged defendant with evading a peace officer (Veh. Code, § 2800.2, subd. (a)), resisting a peace officer (§ 148, subd. (a)(1)), and driving without a license (Veh. Code, § 12500, subd. (a)). The information also alleged defendant had a prior serious felony and strike (first degree burglary) (§§ 459, 667, subds. (b)-(i). 1170.12, 1192.7, subd. (c)) and had served four prior prison terms (§ 667.5, subd. (b)).

³ *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

Defendant filed a *Romero* motion prior to trial. The trial court denied the motion. Also prior to trial, defendant filed a *Pitchess* motion seeking to discover potential impeachment information regarding the arresting deputies. The trial court conducted an in camera hearing and ordered discovery of information from one incident regarding Pfeifer and none regarding Peyton.

The jury found defendant guilty of evading peace officer and resisting arrest, but found defendant not guilty of driving without a license. In bifurcated proceedings, the trial court found the prior strike and prior prison term allegations true.

Prior to sentencing, defendant orally renewed his *Romero* motion. The court again denied defendant's motion to strike his prior strike conviction, but agreed to strike the oldest of his prior prison term enhancements, other than the strike. The trial court sentenced defendant to an aggregate prison term of nine years, and imposed various fines and fees, awarding defendant 985 days of presentence custody credit. Defendant timely filed this appeal.

DISCUSSION

I

Pitchess Motion

Defendant asks us to conduct an independent review of the sealed records of the trial court's hearing on his *Pitchess* motion to obtain discovery of the relevant officers' personnel records. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1225-1226 (*Mooc*)). We have done so and find no error.

With a *Pitchess* motion, a criminal defendant can "compel discovery" of certain information in police officer personnel files. The defendant must first demonstrate good cause by making "general allegations which establish some cause for discovery" of the information and by showing how it would support a defense to the charge against him. (*Pitchess, supra*, 11 Cal.3d at pp. 536-537; see Evid. Code, § 1043, subd. (b)(3).) If the trial court concludes good cause has been established, the custodian of the officer's

records brings to court all the potentially relevant records and, in camera, the trial court determines whether any information from the records need be disclosed to the defense. (*Mooc, supra*, 26 Cal.4th at p. 1226.)

We will not disturb a trial court's ruling on a *Pitchess* motion absent an abuse of discretion. (*Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1039.) Having independently reviewed the sealed transcript of the *Pitchess* proceeding, we conclude the court followed proper *Pitchess* procedures and did not erroneously withhold any information. (See *People v Fuiava* (2012) 53 Cal.4th 622, 646-648.)

II

Romero Motions

A. *Defendant's Claim*

Defendant contends the trial court abused its discretion in denying his *Romero* motion. He points to the fact that he committed his prior strike 25 years ago, at age 18, and he committed his last felony conviction in 2000 and the "current offense did not involve violent or assaultive behavior." He also argues his "problems with the law stemmed from his alcohol and drug problems and that he has been denied rehabilitation programs based upon his 1986 prior strike which has precluded him from getting the help he needs." He acknowledges he was on misdemeanor probation at the time of his arrest, but contends he had a two-year steady employment history, had successfully completed parole in 2009, and was supporting his child.

B. *Pre-Trial Romero Motion*

Defendant filed a pre-trial *Romero* motion. He noted he committed his only strike in 1986, at age 18. He acknowledged multiple subsequent convictions, including for domestic violence, "transportation/sales" of drugs, and evading a police officer as well as multiple misdemeanor convictions. Nonetheless, he argued his prior strike should be stricken, given how remote the strike was and his young age when he committed the offense. He further argued his current offense was "minor and non-aggravated" and not

violent. In supplemental briefing, counsel argued defendant had been denied drug treatment, counseling, and anger management programs because of his prior strike conviction; that he had not had a felony conviction since 2000; had been employed for two years; and had a 19-month-old child he was supporting. Counsel also contended defendant fled from police because of a fear of being beaten.

In response, the People noted defendant had spent the better part of the past 23 years in and out of custody and that even while on parole, he continued “an active criminal career.”

The court acknowledged the strike was “old” and occurred when defendant was young. However, there was no evidence of a significant gap in defendant’s criminal activity or behavior. Defendant had a “laundry list of criminal violations” which even if they were not felonies, were “at the very least, antisocial.” The court also noted defendant had a prior conviction for evading police. Further, the current offense included an allegation defendant had engaged in conduct evidencing a willful and wanton disregard for the safety of persons and property. The court denied the motion.

C. Post-Trial Romero Motion

At sentencing, defendant renewed his *Romero* motion. Defendant told the court that he had been seeking help for his drug addictions and anger problems, but was excluded from treatment programs due to his strike conviction. Defendant claimed his criminal behavior was related to drug and alcohol abuse. The court also considered additional argument from counsel and the probation report.

The report showed that in 1982, defendant was adjudicated a ward of the court for committing a battery. Two years later, he sustained another juvenile adjudication for stealing school property. In 1985 he sustained a third adjudication for brandishing a firearm while driving on the freeway.

Defendant sustained his strike conviction for first degree residential burglary in 1987. Shortly after he was released from his wardship, defendant and a companion broke

into the victim's home to steal from her. The victim returned home and tried to stop defendant; he struggled with her and threatened to kill her. He was paroled in 1988 and less than seven months later, he committed domestic violence by kicking and punching his girlfriend and was sentenced to two years in prison. In 1995 defendant, while on parole, was convicted of evading the police. In 1999 he was convicted of battery after hitting a woman in the face multiple times. In 2000 defendant sustained another conviction for domestic violence and was again sentenced to four years in prison. Also in 2000, while on parole, he was convicted of transporting a controlled substance. In the course of committing that offense, he led police on another high-speed chase. After he crashed his vehicle, he fled on foot. Defendant was released from prison in 2005.

In 2006, only one year after his release from prison, he was convicted of driving while intoxicated. In 2007 he was convicted for misdemeanor domestic violence against his pregnant girlfriend, kicking, punching and dragging her by the hair. In 2009 he was again convicted of domestic violence after another fight with his girlfriend. Nineteen days prior to the current offense, defendant was arrested for possessing a controlled substance. While in custody on the current matter, defendant violated a restraining order by attempting to contact his ex-girlfriend on six separate occasions. Defendant also had sustained "numerous" parole violations and had fought with another jail inmate while awaiting trial in this matter.

Defendant advised probation he had been unemployed since 2010, but considered himself a mechanic by trade.

The trial court acknowledged that drugs appeared to have been a continuous pattern in defendant's life and at the heart of defendant's problems. The court noted that with the exception of the 2010 possession of a controlled substance for sale, defendant's last felony offense was 12 years earlier. Nonetheless, the court observed defendant's record was "extensive and . . . nonstop." The court struck one of the prior prison term enhancements, but denied the motion to strike the prior strike conviction.

D. *The Law*

A trial court may strike a felony conviction for purposes of sentencing if and only if the defendant falls outside the spirit of the three strikes law. (*People v. Williams* (1998) 17 Cal.4th 148, 161.) The trial 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.” (*Id.* at p. 161.)

Dismissal of a strike is a departure from the sentencing norm, and, as such, we may not reverse the denial of a *Romero* motion unless the defendant shows the decision was an abuse of the trial court’s discretion. (See *People v. Carmony* (2004) 33 Cal.4th 367, 377.) Reversal is justified where the trial court was unaware of its discretion or applied improper factors. (*Id.* at p. 378.) But where the trial court knew 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.’ ” (*Ibid.*)

E. *Analysis*

Since 1982 defendant has sustained three juvenile adjudications and 12 criminal convictions. Six of those convictions were for violent offenses and two involved evading a police officer, the subject of the current case. Defendant has had multiple parole violations and committed the current offense while on probation. He continued criminal behaviors while in custody.

Defendant has not pointed to anything in the record that shows the trial court was unaware of its discretion to dismiss a strike, that it declined to exercise its discretion based on a clearly improper reason, or that it did not properly consider the mitigating factors. The trial court expressly considered the remoteness of defendant’s prior strike conviction, his age at the time of the strike conviction and the contribution of drugs and

alcohol to his criminal history. The trial court considered the nature of the current offense, defendant's significant criminal history, and prior convictions for the same offense. The trial court understood the scope of its discretion and carefully and thoroughly considered the permissible factors in declining to dismiss one of defendant's prior strikes.

Moreover, the trial court's ruling is amply supported by the record. The purpose of the three strikes law is to provide increased punishment for recidivist offenders who, by reason of their criminal history for violent or serious felonies, have demonstrated that they are neither rehabilitated nor deterred from further criminal activity as a result of their prior imprisonment. (See *People v. Davis* (1997) 15 Cal.4th 1096, 1099; *People v. Leng* (1999) 71 Cal.App.4th 1, 14.) Defendant has demonstrated he is neither rehabilitated nor deterred. He is well within the spirit of the three strikes law. The trial court did not abuse its discretion in denying his *Romero* motion.

DISPOSITION

The judgment is affirmed.

DUARTE, J.

We concur:

NICHOLSON, Acting P. J.

MURRAY, J.