

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE,

Plaintiff and Respondent,

v.

BERT LAND CALLIS,

Defendant and Appellant.

C081239

(Super. Ct. No. CM043976)

Defendant Bert Land Callis pled no contest to receipt of a stolen motor vehicle. The trial court sentenced him to the upper term of three years. On appeal, he contends the trial court abused its discretion in imposing the upper term. We disagree and affirm.

BACKGROUND

On December 30, 2015, defendant pled no contest to receipt of a stolen motor vehicle and admitted the value of the stolen property exceeded \$950. In exchange for his plea, the district attorney dismissed three pending misdemeanor cases subject to a *Harvey*¹ waiver.

¹ *People v. Harvey* (1979) 25 Cal.3d 754.

On January 27, 2016, defendant's application for probation was denied and he was sentenced to the upper term of three years. In denying defendant's application for probation and imposing an upper term sentence, the trial court stated:

"Defendant is statutorily eligible for probation only in the unusual case pursuant to Penal Code Section 1203(e) (4). [The] Court has reviewed the unusual case criteria set forth in California Rule of Court 4.413, and I do not find this case meets any of the criteria set forth therein; and as such, probation is denied.

"However, even if defendant were not statutorily ineligible for probation, probation would be denied for the following reasons: Defendant's prior record of criminal conduct indicates a pattern of regular criminal conduct; defendant's prior performance on probation was unsuccessful.

"The Court has reviewed the circumstances in aggravation and those in mitigation, and I find the circumstances in aggravation outweigh those in mitigation.

"Aggravation, defendant's prior convictions as an adult are numerous: Five prior felonies; 18 prior misdemeanors. His prior performance on probation was unsatisfactory.

"In mitigation, he's acknowledged wrongdoing at an early stage of the proceedings, he's willing to comply with terms and conditions of probation, and he's willing to enter and complete residential rehab.

"On balance, I find the circumstances in aggravation outweigh the circumstances in mitigation."

DISCUSSION

Defendant contends the trial court abused its discretion in imposing the upper term sentence. He argues that, "despite his lengthy record, it was not of a nature to warrant imposition of the upper term in this case, particularly in light of [his] obvious need and willingness to take part in counseling for his drug and alcohol problems," and the fact that four of his five prior felony convictions are potentially reducible to misdemeanors under "Proposition 47" (codified in Pen. Code, § 1170.18).

Selection of the appropriate term is a matter within the broad discretion of the trial court. (*People v. Avalos* (1996) 47 Cal.App.4th 1569, 1582.) A single factor in aggravation will justify the trial court's imposition of the upper term. (*People v. Sandoval* (2007) 41 Cal.4th 825, 848.) We review a trial court's decision to impose an upper term for abuse of discretion. (*Id.* at p. 847.) A sentence is an abuse of discretion if the trial court "relies upon circumstances that are not relevant to the decision or that otherwise constitute an improper basis for decision." (*Ibid.*) We find no abuse of discretion.

Here, it is indisputable that defendant's criminal record is exceptionally lengthy. Whether classified as felonies or misdemeanors, defendant has managed to accrue 23 criminal convictions as an adult -- rarely (only twice) going more than two years without picking up a new conviction.² He has received over a dozen grants of probation and been sentenced to periods of incarceration on at least 16 separate occasions. He has also been provided with drug rehabilitation programs at least twice. Nonetheless, defendant continues to commit new crimes -- this time a felony unrelated to his drug addiction. He also had three *additional* misdemeanor cases dismissed with *Harvey* waivers, in exchange for his plea in this case. Thus, whether four of his five prior felony convictions could, upon appropriate application under Penal Code section 1170.18, be reduced to

² Defendant emphasizes that he had not accrued any convictions after 2013. We note, however, that defendant was sentenced to two years on May 8, 2014 (for offenses committed on April 28, 2013) and an additional 180 days on May 9, 2014 (for an offense committed on November 12, 2013) and committed the current felony offense on December 5, 2015 -- only 19 months after his sentencing. Additionally, the offenses resulting in the dismissed misdemeanor cases were committed on December 16, 2014, September 10, 2015, and September 28, 2015. This is hardly an impressive indication of rehabilitation or reason to disregard his otherwise numerous criminal convictions when determining the appropriate sentence.

