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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

SKYLER SLOAN BRAVEHEART,

Defendant and Appellant.

D061942

(Super. Ct. No. SCN295457)

APPEAL from a judgment of the Superior Court of San Diego County, Aaron H. Katz, Judge. Affirmed as modified, with directions.

A jury convicted Skyler Bravehart of sexual intercourse with a child 10 years old or younger (Pen. Code,<sup>1</sup> § 288.7, subd. (a)); sodomy with a child 10 years old or younger (§ 288.7, subd. (a)); sexual penetration with a child 10 years old or younger (§ 288.7, subd. (b)) and oral copulation with a child 10 years old or younger (§ 288.7, subd. (b)). Bravehart admitted a prior serious felony conviction (§ 667, subd. (a)(1)); a serious/

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

violent felony prior conviction (strike prior; § 667, subds. (b)-(i)) and a prison prior (§ 667.5, subd. (b)).

Based on the offenses, the strike prior and the serious felony prior, the court sentenced Bravehart to an indeterminate term of 160 years to life consecutive to a determinate term of 20 years. The trial court stayed the one-year term for the prison prior.

Bravehart appeals, challenging his admission of the prior conviction which gave rise to the three types of alleged prior convictions. He contends the trial court failed to adequately advise him of his trial rights and the consequences of his admission of the alleged prior convictions. Bravehart also contends, and the respondent agrees, that the trial court erred in staying the prison prior. Both parties correctly agree the court must strike such prior, rather than staying it.

We will reject Bravehart's contention that his admission of the alleged prior convictions was invalid. We will modify the judgment to strike the prison prior. Otherwise we will affirm the judgment.

Since Bravehart does not challenge either the admissibility or sufficiency of the evidence to support his convictions, we will omit the traditional statement of facts and proceed directly to the discussion of the issue presented

## DISCUSSION

Bravehart contends the trial court failed to adequately advise him of his trial rights regarding proof of his alleged prior conviction and that the court also failed to advise him of the consequences of admitting the truth of the allegation. While the trial court's

advisement was not perfect, our review of the record demonstrates that Bravehart made a knowing and voluntary decision to waive trial on the alleged prior convictions and that his admission of the truth of the allegations was valid.

*A. Background*

During the *in limine* motions, the court discussed the process for resolving the various prior conviction allegations. The parties agreed the trial on those allegations should be bifurcated from the trial on the charges. During that process, the following discussion took place:

"[PROSECUTOR]: And then as far as the priors are concerned, I'm assuming we're going to do a bifurcated trial.

"THE COURT: Right. I'm glad you brought that up. We didn't discuss that, but I need to--we need to talk about two things: One--and that's why I didn't obviously read it, but-- ¶ One, Mr. Bravehart, with regard to the priors, that being what's alleged on the information, you have a right to have that trial on the priors. The People have to prove those priors. So you have a right to have that bifurcated, a separate trial on that issue. ¶ And, two, you have a right to a jury trial, or you can waive the jury and have the Court decide whether or not the People have proven that you were convicted of those priors--of that prior. ¶ So, [defense counsel], do you want to chat with him just for a second to see what his desires are in that regard?

"[DEFENSE COUNSEL]: I will, Your Honor. (An attorney-client conference ensued.)

"[DEFENSE COUNSEL]: That's fine. He's prepared to waive his right to a jury trial as to the priors, Your Honor.

"THE COURT: And he wants to have it bifurcated?

"[DEFENSE COUNSEL]: That's correct. Is that correct sir?

"THE DEFENDANT: Right."

The trial process continued through jury trial complete with cross-examination of witnesses and with Bravehart electing not to testify. After the jury verdict the following exchange took place between the court, counsel and the defendant:

"THE COURT: We are here to deal with the prior conviction that's alleged on the information. Mr. Bravehart has previously indicated a willingness to waive jury and permit the Court to determine whether or not he has suffered the prior conviction, felony conviction, as alleged in the information. [¶] My understanding, though, is that Mr. Bravehart is prepared to admit today that he did suffer this prior conviction. That being case SCN258300. [¶] Is that correct, [defense counsel]?"

"[DEFENSE COUNSEL]: Yes, Your Honor. We received an opportunity to review the documents presented by the People, including a copy of his booking photos from the present case and the past case, a copy of the change of plea form on that case, and a copy of the fingerprints that were taken on that previous case, and the report of comparison that was done with the current case. As a result of that, Mr. Bravehart is prepared to admit that he was the person that suffered the conviction in that previous case.

"THE COURT: All right. There are- there's one specific case that we're discussing. The People alleged that it was--it is a strike prior within the meaning of Penal Code Section 667(b) through (i), 1170.12, and Penal Code Section 668. It's also alleged that it is a prison prior pursuant to Penal Code Section 667.5(b) and Penal Code Section 668, and also a serious felony prior pursuant to 667(a)(1), Penal Code Section 668, and 1192.7(c). All right. Mr. Bravehart, sir, in the information it alleges that on or about--

"THE DEFENDANT: I don't want to hear that. I don't care about that. Just book me. Whatever you have to do, sir. No disrespect. Just do whatever you've got to do. I don't have no rights.

"THE COURT: Mr. Bravehart, I certainly understand that you are upset, but I need--I have got a job to do.

"THE DEFENDANT: Upset ain't even the word now, Man. Come on now.

[¶] . . . [¶]

"THE COURT: Okay. Well, let's go through it and make sure it's clear on the record. Okay?

"THE DEFENDANT: Why spare me the drama?

"THE COURT: There's no drama. And you're the one who's creating--

"THE DEFENDANT: She already gave me enough.

"THE COURT: We need to get through this. I need your patience. Let's walk through this, and then we'll move forward. Okay? [¶] So anyway, Mr. Bravehart, it alleges in the information that you were charged and convicted of a violation of Penal Code Section 422. The date of the conviction is April 7th, 2009, Case Number SCN258300, out of the San Diego Superior Court. Sir, do you admit that you suffered that prior conviction pursuant to Penal Code section 667.5(b) and Penal Code Section 688 as a prison prior? Do you admit that, sir?

"THE DEFENDANT: Yeah.

"THE COURT: And, sir, do you further admit that that is a serious felony prior pursuant to Penal Code Section 667(a)(1), Penal Code Section 668, and 1192.7(c)?

"THE DEFENDANT: Yeah.

"THE COURT: And, finally, sir, do you admit that it is a strike prior pursuant to Penal Code Section 667(b) through (i), and 1170.12, and Penal Code Section 668?

"THE DEFENDANT: Yes.

"THE COURT: All right. Admission is received."

## B. Legal Principles

In the case of *In re Yurko* (1974) 10 Cal.3d 857, 863 (*Yurko*), the court established the requirements for a valid waiver of trial rights necessary for an admission of an alleged prior conviction. The court held that the defendant must be advised of (1) the right to a trial on the proof of the prior conviction, (2) the right to remain silent and (3) the right to confront and cross-examine witnesses. In the absence of a full warning and waiver the *Yurko* rule required automatic reversal of the admission. (*People v. Mosby* (2004) 33 Cal.4th 353, 360 (*Mosby*).

Since *Yurko, supra*, 10 Cal.3d 857, the Supreme Court has re-examined the rule of automatic reversal in the absence of a full warning. In *Mosby*, the court examined a case in which the defendant had waived trial on a prior conviction allegation immediately following a jury trial. There the court concluded that where there has at least been a partial warning and where the court could infer that the defendant, having just exercised his or her trial rights, the admission of the allegations could be valid even without full compliance with the *Yurko* warning/waiver rule. The court in *Mosby* held that the question on appeal is whether, based on the totality of the circumstances, the court can conclude the defendant made a knowing and intelligent decision to admit the alleged prior conviction. (*Mosby, supra*, 33 Cal.4th at pp. 361-363.)

In evaluating the totality of the circumstances the court can consider the advisements which were given, whether the defendant exercised the trial rights in the jury trial and the defendant's prior experiences with the criminal justice system. (*Mosby, supra*, 33 Cal.4th at pp. 364-365.)

### *C. Analysis*

The record in this case demonstrates that the defendant was informed of his right to a jury trial on the prior convictions and that the prosecution had to prove the prior allegation. Each time the issue was discussed the court took a break to allow Bravehart to confer with counsel. Immediately prior to his admissions, the defendant and counsel were provided with the documents which support the prior conviction and it is clear from the record they reviewed the documents, including booking photo and fingerprints before the defendant admitted the allegations.

Similar to the circumstances in *Mosby, supra*, 33 Cal.4th 353, the defendant here had just been through a jury trial where his counsel cross-examined witnesses. As we have noted, Bravehart had been advised of his right to testify or remain silent and he elected to remain silent during the jury trial.

Finally, on the issue of trial rights, the probation report shows Bravehart had an extensive criminal history, which included a number of dispositions by guilty plea. Thus, although it would have been better for the trial court to take a moment to fully comply with the mandate of *Yurko, supra*, 10 Cal.3d 857, it is abundantly clear from this record that the defendant was fully aware of his trial rights on the allegations and elected to admit them without trial.

### *D. The Direct Consequences of the Admissions*

As an additional ground to set aside the admissions, Bravehart notes the court failed to inform him of the direct consequences of admitting the alleged strike prior and the alleged serious felony prior. Indeed the consequences were weighty. The admission

of those allegations added approximately 100 years to his sentence. Thus, it seems to us that it is not unreasonable to require trial courts to take a moment and advise the defendant of those consequences.

On the other hand, there is no constitutional requirement that a defendant be informed of the direct consequences of admitting a prior conviction. (*People v. Jones* (2009) 178 Cal.App.4th 853, 858.) As such, due process does not demand the advice of consequences, and, absent some objection in the trial court the issue can be forfeited.

There is also the practical consideration presented by this case. The defendant, represented by counsel, had abundant opportunity to prepare for and to contest the prior conviction allegations. We infer from counsel's comments prior to the admission that the defendant and counsel had reviewed the record of the prior conviction. It does appear they were satisfied not only that the prior conviction was valid, but that its proof was inevitable. Thus, although the consequences of the allegations were substantial in this case, the absence of express advisement of the consequences does not undermine our conclusion that the defendant knowingly and intelligently waived his right to a trial on the allegations. Accordingly, we find no basis in this record to justify reversal of the admissions.

#### DISPOSITION

The judgment is modified to strike the finding on the prison prior conviction (§ 667.5, subd. (b)). The superior court is directed to prepare an amended abstract of judgment reflecting the modification and to forward the amended abstract to the

Department of Corrections and Rehabilitation. In all other respects the judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

McINTYRE, J.

AARON, J.