

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

SHANNON LOWE DODSON,

Defendant and Appellant.

D061991

(Super. Ct. No. SCD236887)

APPEAL from a judgment of the Superior Court of San Diego County, Charles G. Rogers, Judge. Affirmed.

INTRODUCTION

A. Guilty Plea

At the November 29, 2011 change of plea hearing, after defendant Shannon Lowe Dodson initialed and signed a change of plea form, the court told Dodson that under the plea agreement his "sentencing range could be anywhere between a minimum of three

years in state prison to a maximum of 27 years in state prison,"¹ the court would make the sentencing determination after a sentencing hearing, Dodson would not necessarily receive the seven-year sentence the prosecutor had offered (and Dodson had rejected) earlier, and, since Dodson was admitting responsibility, the court was "not going to go to the high end of the sentencing range and give [him] the max or anything close to it."

After the court advised Dodson of his constitutional rights and the potential consequences of his plea, Dodson pleaded guilty to one count of conspiracy to commit first degree robbery—home invasion robbery in concert (count 1: Pen. Code, § 182, subd. (a)(1). (Undesignated statutory references will be to the Penal Code.) Dodson admitted count 1 allegations that (1) he committed count 1 for the benefit of, at the direction of, and in association with a criminal street gang with the specific intent to promote, further and assist in criminal conduct by gang members (§ 186.22, subd. (b)(1)); and (2) in committing that street gang crime, he unlawfully carried a firearm on his person or in a vehicle (§ 12021.5, subd. (a)). Dodson also admitted that in 2008 he had suffered a prior juvenile robbery adjudication that qualified as a strike prior (§§ 667, subds. (b)-(i), 668, 1170.12). On the People's motion, the court dismissed the remaining counts and allegations alleged in the felony complaint.

The court found that Dodson understood and voluntarily and intelligently waived his constitutional rights, his plea and admissions were "free and voluntary," he

¹ The "Plea of Guilty/No Contest—Felony" form that Dodson initialed and signed stated that Dodson "[had] not been induced to enter this plea by any promise or representation of any kind" and indicated a sentencing range of a minimum of three years and maximum of 27 years in state prison.

understood the nature of the charges and the consequences of the plea and admissions, and there was a factual basis for the plea and admissions.

B. Dodson's Romero Motion/Sentencing

Defense counsel brought, on Dodson's behalf, a motion under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 and section 1385 to strike the prior strike allegation (hereafter referred to as the *Romero* motion), and filed in conjunction with that motion a sentencing memorandum in mitigation. Dodson's *Romero* motion listed the following nine reasons for striking the strike prior: (1) "The [s]trike [p]rior is a juvenile adjudication suffered when he was 17 years old."² (2) "The current offense was initiated by law enforcement and [Dodson's] older co-defendants." (3) "The current offense involves a fictitious amount of drugs used by law enforcement to bait the co-defendants." (4) "The punishment under the Three Strikes law is disproportionate to the severity of the current offense." (5) "The punishment under the Three Strikes law is disproportionate to [Dodson's] criminal history." (6) the punishment under the [T]hree [S]trikes law is disproportionate to [Dodson's] minimal role and participation in the conspiracy." (7) "[Dodson's] criminal history is over-represented." (8) "[Dodson's] criminal history is a result of [his] homelessness and his untreated drug addiction." (9) "[Dodson], aged twenty, is quite youthful and is capable of re-habilitation." The People opposed Dodson's *Romero* motion, arguing that Dodson "squarely falls within the spirit of the Three Strikes law as a repeat and serial offender."

² The record shows that Dodson was born in June 1991, and thus he was 20 years of age when he committed count 1 in August 2011.

On February 16, 2012, Dodson appeared at the sentencing hearing with his counsel. The court indicated it had read and considered the probation officer's report, Dodson's *Romero* motion, memorandum in mitigation and supporting letters, and the prosecutor's opposition to the *Romero* motion. In the exercise of its discretion following oral arguments, the court considered the factors set forth in *People v. Williams* (1998) 17 Cal.4th 148,³ and denied Dodson's *Romero* motion. The court reasoned that, "look[ing] at all these factors, including the fact that [Dodson] allowed himself to be brought into this, to join up with this conspiracy so soon after being released from prison, I think frankly it would be an abuse of my discretion to strike the strike."

After hearing further arguments by defense counsel and the prosecutor, the court sentenced Dodson for his count 1 conviction to the low term of three years in state prison, doubled to six years under the Three Strikes law. The court struck the punishment for the gang allegation (§ 186.22, subd. (b)(1)), stating "[t]he allegation itself has been established, it remains, but the punishment of five years is stricken," and imposed a

³ In *People v. Williams, supra*, 17 Cal.4th at page 161, our state Supreme Court clarified the standard for dismissing a strike "in furtherance of justice" (§ 1385, subd. (a)) by requiring that the defendant be deemed "outside" the "spirit" of the Three Strikes law before a strike is dismissed: "[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 . . . 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."

consecutive two-year term for Dodson's admitted possession of a firearm with gang-related conduct (§ 12021.5, subd. (a)). The court thus sentenced Dodson to an aggregate prison term of eight years.

Dodson filed his notice of appeal after he requested and obtained a certificate of probable cause.

FACTUAL BACKGROUND

For purposes of the change of plea hearing, Dodson admitted as the factual basis for his guilty plea and admissions that he "conspired to commit a residential burglary in concert while armed with a gun; [he] had a prior strike adjudication offense as a juvenile; [he] did this in conjunction with other criminal street gang members; and this was done, at least in part, for the benefit [of] and to further criminal conduct by street gang members."

DISCUSSION

Appointed appellate counsel has filed a brief summarizing the proceedings below. Counsel presents no argument for reversal, but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U. S. 738, counsel refers to the following as possible, but not arguable, issues: (1) "Was [Dodson] properly advised of the consequences of pleading guilty. Was he advised of his constitutional rights, and did he waive them before he pleaded guilty?" (2) "Did the court abuse its discretion [by denying Dodson's *Romero* motion and] refusing to strike [his] strike prior for purposes of sentencing?" (3) "Did the court abuse its discretion by imposing a consecutive sentence for Dodson's firearm

enhancement after striking punishment for the gang enhancement?" (4) "Does the record reveal that counsel rendered ineffective assistance of counsel?"

We granted Dodson permission to file a brief on his own behalf, which he did. Although that brief was received, it appears to have been misfiled. In November 2012 we therefore requested that Dodson provide copy of that brief. A second request was made in January 2013. Because the requested copy has not been received, the court has decided the case on the record and briefs on file in the appellate record.

A review of the record pursuant to *People v. Wende, supra*, 25 Cal.3d 436 and *Anders v. California, supra*, 386 U.S. 738, including the possible issues raised by appellate counsel, has disclosed no reasonably arguable appellate issue. The record shows Dodson was properly advised of the consequences of his plea and admissions. He was properly advised of, and waived, his constitutional rights before he entered his guilty plea and admissions. The court did not abuse its discretion by denying his *Romero* motion. The court did not abuse its sentencing discretion, and defense counsel did not render ineffective assistance. Dodson has been adequately represented by counsel on this appeal.

DISPOSITION

The judgment is affirmed.

NARES, Acting P. J.

WE CONCUR:

McDONALD, J.

IRION, J.