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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES SANDERS,

Defendant and Appellant.

E054155

(Super.Ct.No. RIF151656)

OPINION

APPEAL from the Superior Court of Riverside County. Harry A. Staley, Judge.  
(Retired judge of the Kern Super. Ct. assigned by the Chief Justice pursuant to art. VI,  
§ 6 of the Cal. Const.) Affirmed.

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney  
General, Julie L. Garland, Assistant Attorney General, Garrett Beaumont, and Sharon L.  
Rhodes, Deputy Attorneys General, for Plaintiff and Respondent.

# I

## INTRODUCTION

On July 22, 2009, a felony complaint charged defendant and appellant Charles Sanders with seven felony counts. That same day, defendant pled not guilty and denied all prior strike allegations. Thereafter, the complaint was superseded by an information filed on June 15, 2010, and later by an amended information filed on June 6, 2011. Defendant again pled not guilty.

The amended information charged defendant with burglary under Penal Code<sup>1</sup> section 459 (count 1); unlawfully designing, making, altering and embossing a counterfeit access card under section 484f, subdivision (a) (count 2); unlawfully possessing and displaying an altered, forged or counterfeit driver's license and identification card under section 470b (count 3); unlawful possession of a firearm by a person that had committed a violent offense under former section 12021.1, subdivision (a) (count 4); unlawful possession of a firearm by a felon under former section 12316, subdivision (b)(1) (count 5); and willfully and unlawfully inflicting physical pain and mental suffering upon a child under circumstances likely to produce great bodily harm or death under section 273a, subdivision (a) (count 6). The information also alleged that defendant had suffered two prior convictions for violent or serious felonies, or strikes, within the meaning of sections 667, subdivisions (c) and (e)(2)(A) and 1170.12, subdivision (c)(2)(A); and had suffered two prior offenses, for which defendant had

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

served a prior prison sentence and had not remained free of custody for a period of five years, within the meaning of section 667.5, subdivision (b).

After a jury trial, on June 8, 2011, the jury acquitted defendant of count 6, inflicting physical pain on a child, but found defendant guilty of the lesser offense of child endangerment, in violation of section 273a, subdivision (b). The jury also found defendant guilty of each of the remaining counts.

Moreover, the trial court granted defendant's request under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*), to strike one of his prior serious or violent felonies for sentencing purposes, but denied defendant's request to strike his second strike.

On July 13, 2011, the trial court refused to reconsider the order denying defendant's *Romero* motion on the second strike. Thereafter, the trial court sentenced defendant to an indeterminate sentence of 25 years to life on count 4 (unlawful possession of a firearm by a violent prior offender), which it deemed the principal count, together with the upper term of three years, doubled to six years because of defendant's strike on count 1 (burglary), to run consecutively. The court also sentenced defendant to the upper term of three years each on count 2 (counterfeit access card) and count 3 (counterfeit driver's license); and 180 days on count 6 (child endangerment), which the court deemed to be a misdemeanor under section 17, subdivision (b). The court ordered these sentences to be served concurrently. The court also sentenced defendant to the upper term of three years on count 5 (unlawful possession of a firearm by a felon), and

one year each on defendant's priors, but stayed the sentence on those counts under section 654. Accordingly, defendant received a total sentence of six years, plus 25 years to life.

On July 25, 2011, defendant filed a timely notice of appeal.

## II

### STATEMENT OF FACTS

On July 14, 2009, defendant entered a Shell gas station store in Moreno Valley and made a purchase using a credit card in the name of David Sheffey. Defendant left the credit card at the gas station. Because defendant was a regular customer, gas station manager Bonita Manalacos held the credit card for defendant in her office, together with the transaction receipt.

On July 20, 2009, defendant returned to the gas station and attempted to make a purchase using another credit card in Sheffey's name. Defendant also presented a driver's license with his own photograph, but in Sheffey's name. Cashier Amanda Cardenas came into Manalacos's office to retrieve the credit card defendant had left on July 14. At that time, Manalacos noticed that the card number on the July 14, 2009, transaction receipt did not match the number embossed on the credit card defendant had used and left at the store on that date. Based on her training, Manalacos concluded that the credit card was invalid. Manalacos told Cardenas not to return the card to defendant, and to stall him while she called the police. Manalacos then walked up to the cash register and asked defendant to show his identification again. Defendant demanded that

Manalacos return his card and quickly left the store. Cardenas wrote down the license plate number of defendant's car and provided it to the police.

Police tracked defendant's car to a residence located near the gas station. There, police found defendant crouched down in the doorway of an upstairs bedroom. Near the doorway, and near a bed where a child was lying, police found a loaded semiautomatic firearm in a ready-to-fire position, and an unloaded revolver. Inside the bedroom, police also found a briefcase containing 43 credit cards in other people's names, including Sheffey's; 13 blank credit cards; two credit card readers used to imprint information on a credit card's magnetic strip; 14 USB drives containing lists of hundreds of credit card numbers, names and expiration dates; a laptop computer used to view the USB drives with the user name "dirtred"; and a wallet containing the driver's license defendant had presented at the Shell gas station in Sheffey's name. Police also found men's clothes and a medical marijuana card in defendant's name with his photograph in the bedroom.

During a field show-up outside defendant's home, both Manalacos and Cardenas identified him as the person who had come to the gas station and presented the credit cards in Sheffey's name.

After his arrest, defendant admitted to police that he lived at the house where the police found him; the firearms in the house belonged to him; the guns probably were stolen as he bought them off the streets; he was not David Sheffey; he had tried to use a credit card that did not belong to him at the Shell gas station; he had identification in Sheffey's name because "I was doing something illegal"; and he had purchased the fake

identification card in Sheffey's name off the streets in downtown Los Angeles.

Defendant had the same tattoos as the suspect shown on the gas station's surveillance video.

The parties stipulated that defendant was also known by the nickname "Dirty Red." The parties also stipulated that prior to July 14, 2009, defendant had been convicted of a violent felony.

### III

#### ANALYSIS

Defendant contends that the trial court erred in denying defendant's request to dismiss one of his prior serious/violent felony convictions.

In this case, on March 23, 2010, prior to trial, the trial court, in connection with defendant's preliminary hearing, indicated that, if defendant were to be convicted, the court would strike one of defendant's two felony convictions or strikes. On April 16, 2010, defendant filed a written invitation for the court to do so under *Romero, supra*, 13 Cal.4th 497. However, on April 23, 2010, after reviewing the probation report and the People's opposition to the motion, the court stated that it would not sentence defendant as it had intended because of defendant's poor performance on parole.

Just prior to trial, on June 1, 2011, defendant filed a *Romero* motion to strike defendant's two prior convictions. After his conviction, on June 8, 2011, the trial court stated its intent to strike one of defendant's two strikes (a 1987 robbery conviction) for all purposes, and to strike the other (a 1993 federal bank robbery conviction) as to all but the

fourth count (unlawful possession of a firearm by a violent prior offender). The court noted that the present felonies for which defendant was convicted were less serious offenses; the offense involving a weapon was found by the jury to be a misdemeanor; and the facts of the current offenses did not create a danger to society. The court also noted that there was no physical or emotional injury to any person as a result of defendant's current offenses, and that the financial loss did not appear to be significant. The court stated that, although defendant's criminal record was arguably continuous, the seriousness of the offenses had decreased, and that, although the use of computers by defendant showed a certain level of sophistication, other aspects of the offenses did not. As a result, the trial court struck defendant's conviction (a 1993 federal court conviction for bank robbery) as to all counts except count 4.

At the sentencing hearing on July 13, 2011, the trial court refused to reconsider its prior denial of defendant's request, and affirmed its earlier ruling; it sentenced defendant to a total of six years, plus 25 years to life.

Under section 1385 and *Romero, supra*, 13 Cal.4th 497, a trial court may strike an allegation or finding under the three strikes law that a defendant has been previously convicted of a serious or violent felony, on its own motion, in the furtherance of justice. (*People v. Carmony* (2004) 33 Cal.4th 367, 373 (*Carmony*).)

In *Romero*, the California Supreme Court held that a trial court has discretion to dismiss three-strikes prior felony conviction allegations under section 1385. (*Romero, supra*, 13 Cal.4th at pp. 529-530.) “[A] trial court’s refusal or failure to dismiss or strike

a prior conviction allegation under section 1385 is subject to review for abuse of discretion.” (*Carmony, supra*, 33 Cal.4th at p. 375.) “[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.) ““[T]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.” [Citations.]” (*Id.* at pp. 376-377.)

The three strikes law “establishes a sentencing norm, [and] it carefully circumscribes the trial court’s power to depart from this norm and requires the [trial] court to explicitly justify its decision to do so. . . . [¶] In light of this presumption, a trial court will only abuse its discretion in failing to strike a prior felony conviction allegation in limited circumstances. For example, an abuse of discretion occurs where the trial court was not ‘aware of its discretion’ to dismiss [citation], or where the [trial] court considered impermissible factors in declining to dismiss [citation].” (*Carmony, supra*, 33 Cal.4th at p. 378.)

In this case, defendant has a lengthy criminal record dating back to 1981. During that almost 30-year period, defendant never has gone for a significant period of time without engaging in some type of criminal activity. Moreover, defendant has repeatedly violated the conditions of his probation or parole. At the time of this arrest, defendant was unemployed and living off the use of fraudulent credit cards.

Specifically, on October 22, 1981, when defendant was a juvenile, he committed second degree burglary under section 459, and was committed to the California Youth Authority. After his release on September 15, 1982, defendant twice violated his parole; he was returned to custody each time. Defendant was last paroled on May 23, 1985. Five months later, as an adult, defendant was convicted for misdemeanor trespass under section 602, subdivision (j), and was placed on summary probation for 24 months.

On December 16, 1986, while on probation, defendant committed his first strike, robbery under section 211. On March 18, 1987, defendant was sentenced to state prison for two years. Between his initial release in April 1988 and his discharge in May 1992, defendant violated his parole four times. For each violation, defendant served additional time in prison.

On April 21, 1993, less than a year after he was discharged from parole, defendant was placed on summary probation for 12 months for failure to disperse at the scene of a riot under section 409. On August 16, 1993, while on probation for that offense, defendant committed armed bank robbery (18 U.S.C. § 2113(a), (d)). On December 13, 1993, defendant was sentenced to federal prison for nine years two months. On April 30, 2002, defendant was released from prison and placed on supervised release for three years. On June 11, 2002, defendant admitted that he violated the conditions of his supervised release; the court sentenced defendant to prison for three and a half months. In October of 2002, defendant again was released from prison on supervised release. On January 6, 2003, defendant admitted that he again had violated the conditions of his

supervised release; the court sent him to prison for seven months. On July 12, 2004, defendant violated the conditions of his supervised release once more and was sent back to prison for eight months. Defendant was released from federal prison in February 2005.

In December 2007, in Las Vegas, Nevada, defendant was arrested and charged with three counts of credit card fraud and one count of possession/sale of false identification. Defendant failed to appear and a bench warrant was issued for his arrest. In July 2009, defendant committed the same crimes in the instant case. Based on defendant's pattern of criminal activity for almost 30 years, we cannot say that the trial court's decision in declining to dismiss one of the strike priors as to count 4 was "so irrational or arbitrary that no reasonable person could agree with it." (*Carmony, supra*, 33 Cal.4th at p. 377.)

Notwithstanding the deferential abuse of discretion standard of review on appeal, defendant relies on the "remoteness" of defendant's prior convictions, and the "nonserious" nature of his current offenses, to support his argument that the trial court abused its discretion. We disagree.

*People v. Philpot* (2004) 122 Cal.App.4th 893 (Fourth Dist., Div. Two) (*Philpot*), is instructive. In *Philpot*, after considering the defendant's criminal history and arguments that the lower court had erred in refusing to strike a prior conviction, we affirmed, and stated:

"Although defendant points out his personal background and the remoteness of his priors, the court could not overlook the fact defendant consistently committed criminal

offenses for the past 20 years. His conduct as a whole was a strong indication of unwillingness or inability to comply with the law. It is clear from the record that prior rehabilitative efforts have been unsuccessful for defendant. Indeed, defendant's prospects for the future look no better than the past, in light of defendant's record of prior offense and reoffense and his underlying drug addiction. There is no indication from the record here that the court failed to consider the relevant factors or that it abused its discretion in determining that, as a flagrant recidivist, defendant was not outside the spirit of the three strikes law." (*Philpot, supra*, 122 Cal.App.4th at pp. 906-907.)

Similarly, in this case, defendant has chosen to proceed on a path of unlawfulness. His conduct in failing to conform to the law has been consistent; he has committed serious offenses, and has refused to avail himself to the opportunities for reform. Defendant falls far short of showing that his case is extraordinary in the sense that he, "a flagrant recidivist," falls outside the spirit of the three strikes law. (*Philpot, supra*, 122 Cal.App.4th at p. 907.)

Indeed, defendant appears to be "an exemplar of the 'revolving door' career criminal to whom the Three Strikes law is addressed." (*People v. Stone* (1999) 75 Cal.App.4th 707, 717.) Thus, given defendant's continuous criminal history, his numerous parole and probation violations, the seriousness of the past and present offenses, and his seemingly dim prospects for rehabilitation and lack of meaningful crime-free periods, we cannot say that the trial court abused its discretion when it

declined to dismiss one or more of defendant’s prior strike convictions. The trial court’s decision not to strike defendant’s priors was neither irrational nor arbitrary.

In short, defendant was within the spirit of the three strikes law (see *People v. Williams* (1998) 17 Cal.4th 148, 161), the trial court did not rule in an “arbitrary, capricious or patently absurd manner that resulted in a manifest miscarriage of justice” (*People v. Jordan* (1986) 42 Cal.3d 308, 316), and we find no abuse of discretion in declining to dismiss one of the strike priors as to count 4 (see *Romero, supra*, 13 Cal.4th at p. 504).

IV

DISPOSITION

The judgment is affirmed.

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MCKINSTER  
J.

We concur:

HOLLENHORST  
Acting P. J.

KING  
J.