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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. JONALA ABRISHA JONES, Defendant and Appellant.	E056161 (Super.Ct.No. RIF1101090) OPINION

APPEAL from the Superior Court of Riverside County. Charles J. Koosed, Judge. Affirmed.

Janice R. Mazur, 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, Lilia E. Garcia and Elizabeth M. Carino, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant and appellant Jonala Abrisha Jones and codefendant Sada Corneil[1] guilty of assault by means of force likely to produce great bodily injury. (Pen. Code, § 245, subd. (a)(1).)[2] The jury also found true that defendant and codefendant personally inflicted great bodily injury upon the victim. (§ 12022.7, subd. (a).) Defendant thereafter waived her constitutional rights and admitted that she had suffered one prior serious felony conviction (§ 667, subd. (a)) and one prior strike conviction (§§ 667, subds. (c) & (e)(1), 1170.12, subd. (c)(1)).[3] Defendant was sentenced to a total term of 12 years in state prison with credit for time served. Defendant's sole contention on appeal is that the trial court abused its discretion in refusing to strike her prior strike conviction or the great bodily injury enhancement. We reject this contention and affirm the judgment.

I

FACTUAL BACKGROUND

Defendant and the victim used to be "best" friends until defendant suspected the victim of starting a relationship with the father of defendant's baby. Codefendant Corneil was also acquainted with the victim, but they were never friends.

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[1] Codefendant Corneil is not a party to this appeal.

[2] All future statutory references are to the Penal Code unless otherwise stated.

[3] The serious prior felony and the strike prior were based on the same 2009 conviction for first degree burglary. (§ 459.)

On October 18, 2010, the victim and her mother were outside of a friend's apartment in Riverside smoking a cigarette when they saw defendant and her friends walk by. Defendant was glaring at the victim. The victim asked defendant if she had a problem. Defendant did not say anything and continued to walk down the sidewalk.

Approximately 30 to 45 minutes later, someone came to the friend's apartment door and told the victim to come outside and fight defendant. One of the girls with defendant said, "'You better open up the door or we going to kick this bitch in.'"

The victim's mother went outside and spoke with defendant, trying to calm her down. She stated they were all friends and asked, "'Why you letting somebody come between you all?'" After a few minutes, the victim came outside and stood next to her mother. Defendant then began calling the victim a whore and accused her of sleeping around. An argument ensued between the victim and defendant. After the two stopped arguing, everyone began walking away as if the confrontation was over. However, as the victim was walking away, defendant punched the victim on the side of her head and the two began fighting.

Defendant and the victim were taking swings at each other until they both fell to the ground. Defendant jumped on top of the victim and began punching her in the face.[4] While defendant was straddling the victim, other girls, including codefendant Corneil,

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[4] At trial, the victim recalled being hit on the face while she was on the ground but could not determine by whom.

Codefendant Corneil testified for the defense and stated that no one else jumped into the fight, but it looked like defendant was getting the upper hand. She also stated that defendant never kicked, elbowed, or head-butted the victim and that the victim's mother approved of the one-on-one fight.

jumped in and began punching and kicking her. The victim's mother attempted to get the girls off her daughter, saying it was no longer a fair fight, but got punched in the jaw by codefendant Corneil instead. The fight eventually stopped and everyone left the area.

The victim was taken to the hospital by paramedics. She had a light depression on her left cheek, bruising on her face, and swelling in her nose. She suffered a fracture in her maxillary sinus that was caused by a hard punch to the face, and her doctor had to pop her nose back into place. The victim was in pain for about three to four months after the assault; her nose and the left side of her face were numb for about four months; and she had to see a doctor three or four times after her initial hospital visit.

II

DISCUSSION

Defendant contends the trial court abused its discretion when it denied her motion to strike her prior strike conviction or the great bodily injury enhancement allegation pursuant to section 1385. Essentially, she claims that under the totality of the circumstances a 12-year sentence was not warranted in this case. We disagree.

Under section 1385, subdivision (a), the trial court has discretion to strike a prior felony conviction allegation in furtherance of justice. (*People v. Superior Court* (*Romero*) (1996) 13 Cal.4th 497, 529-530.) In order to do so, the court "must consider whether, in light of the nature and circumstances of his [or her] present felonies and prior serious and/or violent felony convictions, and the particulars of his [or her] 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 [or she] had not previously

been convicted of one or more serious and/or violent felonies." (*People v. Williams* (1998) 17 Cal.4th 148, 161 (*Williams*).) A trial court must enter a statement of reasons in the minutes of the court when dismissing a prior conviction; however, it is not required to "'explain its decision not to exercise its power to dismiss or strike.' [Citation.]" (*People v. Carmony* (2004) 33 Cal.4th 367, 376 (*Carmony*).)

We review the trial court's refusal to strike a prior felony conviction under section 1385 for abuse of discretion. (*Carmony*, *supra*, 33 Cal.4th at p. 376.) The defendant bears the burden of establishing that the trial court's decision was unreasonable or arbitrary. (*People v. Superior Court* (*Alvarez*) (1997) 14 Cal.4th 968, 977-978 [presumption that trial court acts to achieve lawful sentencing objectives].) "Where the record demonstrates that the trial court 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. . . ." (*People v. Myers* (1999) 69 Cal.App.4th 305, 310.) "'[I]t is not enough to show that reasonable people might disagree about whether to strike one or more' prior conviction allegations." (*Carmony*, *supra*, 33 Cal.4th at p. 378.) "[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.)

Defendant filed a written motion to dismiss her prior 2009 strike conviction for residential burglary, claiming she fell outside the spirit of the three strikes law based on her personal background and the circumstances surrounding her prior and present offenses. In regard to her personal background, defendant asserts that she was born to a teen mother who was in and out of prison during her childhood. As a result, she was

placed in foster care many times and was unable to graduate high school. She also states that she was sexually molested as a child; that she had been diagnosed with bipolar manic disorder; that she became pregnant with her first child at 17 years old; and that she gave birth to her second child while in custody in the instant matter. She further claims that despite her challenges, she had been employed at a McDonald's and other fast food restaurants; that she was involved in school sports and modeling; that she had participated in the Junior Olympics in 2005; and that she suffered no juvenile adjudications. Defendant also states that while in custody she had obtained her GED, completed anger management classes, and planned to complete her sentence, reenter society, obtain employment, and raise her two children.

In regard to her prior offense, defendant claims that she was 18 years old and five months pregnant at the time she committed the burglary with the father of her baby. She also asserts that no one was inside the residence at the time of the offense; that no one was physically injured; and that she took responsibility for her role in the burglary. In regard to her current offense, defendant claims that she did not display criminal sophistication or planning in carrying out the crime; that the fight was an impulsive act; that she did not use any weapons; and that the fight was mutual. She also asserts that participation in the instant offense "is understandable given the all-consuming fight culture" she inhabits "where physical altercations are a normal, everyday occurrence, a routine, seemingly unavoidable means to settle differences, even between friends, and then forgotten."

The People filed a written opposition to defendant's motion to strike, claiming that defendant was on probation for her first strike offense when she committed the instant offense. The People also assert that defendant's prior strike was very recent and that the instant crime was a serious, violent crime, showing defendant's criminal conduct had escalated.

At the sentencing hearing, the trial court noted that it had read defendant's motion to dismiss her prior strike conviction as well as the People's opposition. After defense counsel submitted on the written motion and hearing the prosecutor's brief remarks, the trial court explained that it "had looked at this long and hard" and concluded that defendant fell within the spirit of the three strikes law. The court explained, ". . . unfortunately for [defendant], I don't see how her situation really falls under the full spirit of what *Romero* I think is all about. She's actually the opposite, which is she seems to fall under the spirit of three strikes in that she has a residential burglary which is a strike, which isn't that old, and then gets herself involved in a second strike. I mean I fear for [defendant]. I fear that she will spend the rest of her life in prison if things don't get turned around. [¶] You know, you have a strike offense committed while on probation for a first strike offense. It would be an extreme stretch I think and an abuse of my discretion of that authority vested by *Romero* for me to grant such a motion."

The trial court thereafter denied defendant's motion to strike her prior conviction, and proceeded to sentence defendant to a total term of 12 years in state prison as follows: the low term of two years for the current aggravated assault conviction, doubled to four years due to the prior strike conviction, five years for the prior serious felony conviction

under section 667, subdivision (a), plus three years for the great bodily injury enhancement. The court refused to stay the punishment for the great bodily injury enhancement, noting that the jury found the allegation to be true and the facts were consistent with that finding.

Defendant argues that based on the totality of the circumstances as set out *ante*, the trial court's imposition of an additional two years for the prior strike constituted an abuse of discretion.

Based on defendant's entire record, including her background, the nature and circumstances of her current and past convictions, and her prospects, the trial court did not abuse its discretion in refusing to strike defendant's prior 2009 burglary conviction. As the trial court said, defendant had engaged in violent criminal conduct while on probation for her prior strike conviction. She reoffended less than two years after her first strike conviction by committing a violent assault causing great bodily injury and thereby showing an escalation of criminal conduct. There is nothing in the record to show that the trial court declined to exercise its discretion on improper reasons or that it failed to consider the relevant factors, including defendant's personal and criminal background and the circumstances of the past and present offenses. In fact, the record clearly shows the court was aware of its discretion, aware of the applicable factors a court must consider in dismissing a prior strike, and appropriately applied the factors as outlined in *Williams*. Thus, the trial court reasonably concluded that defendant did not fall outside the spirit of the three strikes law.

Alternatively, defendant claims the trial court should have stricken the additional punishment for the great bodily injury enhancement. We disagree.

Under section 1385, a trial court has the discretion to strike a great bodily injury enhancement upon a statement of reasons in the furtherance of justice. (*People v. Thomas* (1997) 56 Cal.App.4th 396, 403-405.) And, as previously mentioned, a trial court's decision not to exercise its section 1385 discretion to dismiss is reviewed for abuse of discretion. (*Carmony*, *supra*, 33 Cal.4th at p. 374.)

The trial court here properly declined to strike the great bodily injury enhancement, and thoughtfully rendered its decision after balancing the aggravating and mitigating circumstances. The record shows, as pointed out by the trial court, that defendant returned to the apartment to engage in a fight with the victim and waited until the victim was off guard to punch her in the side of the head. As a result of the assault, the victim suffered severe injuries, including a broken nose. There is nothing in the record to demonstrate that the trial court's decision was arbitrary or irrational. The trial court did not abuse its discretion in declining to strike the punishment for the great bodily injury enhancement.

III

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

KING
J.