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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.

RICHARD LEE HAMPSON,

Defendant and Appellant.

E061316

(Super.Ct.No. RIF1310671)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Christian F. Thierbach, Judge. Affirmed.

Daniel Yeager, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald L. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, and Arlene A. Sevidal and Sean M. Rodriguez, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant Richard Lee Hampson appeals from his conviction of transportation for sale of methamphetamine (Health & Saf. Code, § 11379, subd. (a)) and the true finding on the allegation that he had a conviction of a prior serious and violent felony (Pen. Code, §§ 667, subds. (d)(2), (e)(1), 1170.12, subd. (c)(1)). Defendant contends the trial court abused its discretion in declining to dismiss the prior strike conviction because it failed to consider the relevant factors in refusing to dismiss the prior strike conviction and based its decision on personal antipathy toward him.

II. FACTS AND PROCEDURAL BACKGROUND

Because defendant's contentions on appeal concern only the sentencing decision, we set forth the facts of the underlying conviction summarily. On September 20, 2013, a canister containing methamphetamine was found in defendant's vehicle during a consensual search following a traffic stop. Defendant said he intended to sell the methamphetamine. The jury found defendant guilty of transportation for sale of methamphetamine. (Health & Saf. Code, § 11379, subd. (a).) The trial court found true a prior strike allegation. (Pen. Code, §§ 667, subds. (d)(2), (e)(1), 1170.12, subd. (c)(1).) Defendant moved to strike the strike prior.

The probation report indicates defendant was convicted of armed robbery in North Dakota in 1980 and was sentenced to 48 months in prison. He spent additional time in jail for probation violations in 1984 and 1985 and he was convicted of two driving under the influence offenses in 1987 in North Dakota. His later convictions all took place in

this state. In 1995, he was convicted of a violation of Penal Code section 470, for which he spent 14 days in jail and was placed on probation for 24 months. Later in 1995, he was convicted of violations of Vehicle Code sections 23152, subdivision (a) and 2800.1 in Riverside County and was sentenced to 36 months' probation. In 1996, he was convicted of violations of Penal Code sections 245, subdivision (a)(1) and 242, for which he received jail time and probation. In 1999, he was convicted of a violation of Health and Safety Code section 11377, subdivision (a), for which he received jail time and probation. He was convicted of the same offense in 2002, and again received jail time and probation. In 2003, he was convicted of violations of Penal Code sections 4573.8 and 1214.1, subdivision (a). In 2005, he was convicted of a violation of Vehicle Code section 14601.2, subdivision (a). He was convicted of the same offense in 2009, as well as a violation of Penal Code section 1214.1, subdivision (a).

In 1983, he attended an eight-week residential program, following which he maintained sobriety for 11 months. Other than that, he had had no extended sobriety for the past 30 years.

The trial court acknowledged that defendant's criminal offenses stemmed largely from his addiction and that he was "not a career violent and serious offender." The court nonetheless found that defendant was within "the spirit of three strikes." The court stated: "It bothers me that addicts can be warehoused in prison. However, I am aware that there are programs in prison, if one wants to take advantage of it, that deal with drug

rehabilitation programs and counseling. But the onus is on the individual. If the individual is serious about rehabbing, then there is the ability to do so in a prison setting.”

The trial court denied the motion and sentenced defendant to the low term of two years, doubled because of the strike prior.

III. DISCUSSION

We review the trial court’s decision to deny a request to strike a sentencing allegation under the deferential abuse of discretion standard. (*People v. Carmony* (2004) 33 Cal.4th 367, 373-374.) In *Carmony*, the Supreme Court reiterated that “[t]he Three Strikes initiative, as well as the legislative act embodying its terms, was intended to restrict courts’ discretion in sentencing repeat offenders.’ [Citation.] To achieve this end, ‘the Three Strikes law does not offer a discretionary sentencing choice, as do other sentencing laws, but establishes a sentencing requirement to be applied in every case where the defendant has at least one qualifying strike, unless the sentencing court “conclude[es] that an exception to the scheme should be made because, for articulable reasons which can withstand scrutiny for abuse, this defendant should be treated as though he actually fell outside the Three Strikes scheme.”’ [Citation.] [¶] Consistent with the language of and the legislative intent behind the three strikes law, we have established stringent standards that sentencing courts must follow in order to find such an exception. ‘[I]n ruling whether to strike or vacate a prior serious and/or violent felony conviction allegation or finding under the Three Strikes law, . . . 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.' [Citation.] [¶] Thus, the three strikes law not only establishes a sentencing norm, it carefully circumscribes the trial court's power to depart from this norm and requires the court to explicitly justify its decision to do so. In doing so, the law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper." (*Id.* at pp. 377-378.)

The record in the present case indicates the trial court considered the relevant factors. With respect to the nature of the current offense, the trial court recognized that the current crime was a nonviolent drug offense. However, "the nonviolent or nonthreatening nature of the [current] felony cannot alone take the crime outside the spirit of the law." (*People v. Strong* (2001) 87 Cal.App.4th 328, 344.) As the trial court pointed out, defendant's conduct posed the risk of great bodily injury—he was driving with methamphetamine in his vehicle, and he had an extensive history of driving under the influence and without a license.

With respect to the nature and number of the prior offenses, the trial court recognized that defendant had only one prior conviction for a serious or violent felony, and that conviction was 34 years old. However, defendant was currently on probation for receiving stolen property, and he had accumulated some 20 prior convictions, five of

which were felonies. Those prior convictions included assault with a deadly weapon, battery, driving under the influence, and possession of a controlled substance.

With respect to defendant's background, the probation report indicates he was 55 years old and unemployed. He had proved incapable of complying with the terms of the probation; the probation report lists some 20 prior probation violations. Defendant relies heavily on his long-term drug addiction. In *People v. Garcia* (1999) 20 Cal.4th 490, 503, the Supreme Court indicated that drug addiction was a relevant factor in determining whether to strike a prior strike conviction. In that case, the court affirmed the trial court's decision to strike a strike because the defendant was ultimately sentenced to 31 years 4 months to life in prison, and the fact that the sentence was not lenient meant that it was not "inconsistent with the purpose of the Three Strikes law." (*Ibid.*) Another court has observed: "[D]rug addiction is not necessarily regarded as a mitigating factor when a criminal defendant has a long-term problem and seems unwilling to pursue treatment." (*People v. Martinez* (1999) 71 Cal.App.4th 1502, 1511.) Here, defendant had had only 11 months of continuous sobriety in the 1980's following a treatment program, and the record does not indicate that he ever sought treatment since then. As the court stated in *People v. Gaston* (1999) 74 Cal.App.4th 310, 322: "Although 'drug use appears to be an underlying factor in [appellant's] criminal behavior, and in fact may be the root cause thereof,' the record is barren of any attempts by Gaston to 'root out' such destructive drug dependency. Accordingly, his drug dependency does not fall into the category of mitigating circumstances. [Citations.]"

Finally, although defendant's prior strike was 34 years old, we note that when "the defendant has led a continuous life of crime after the prior, there has been no 'washing out,' and there is simply nothing mitigating about [the age of the] prior." (*People v. Humphrey* (1997) 58 Cal.App.4th 809, 813.)

As defendant points out, a trial court abuses its discretion when it refuses to dismiss a strike because of personal antipathy for the defendant and without considering the defendant's background, the nature of the present offense, and other individualized considerations. (*People v. Carrasco* (2008) 163 Cal.App.4th 978, 993.) Here, the record reflects that the trial court did consider the appropriate factors. Defendant bases his argument on the trial court's remarks as follows: "If I had a dollar for every one of these people who came in here and blamed every misfortune in life on their drug addiction, I would own this building and several others downtown. [¶] And it's the same old refrain. Gee, I am addicted to drugs, and I can't control myself. I need a program." However, the trial court gave a lengthy and careful discussion of its sentencing choices, and the overall tenor of the trial court's remarks indicates concern rather than animus.

Courts have repeatedly held that a trial court would abuse its discretion in striking a prior strike conviction for the type of revolving door criminal that defendant exemplifies, in the absence of truly extraordinary circumstances. (See, e.g., *People v. Carmony, supra*, 33 Cal.4th at p. 378; *People v. Stone* (1999) 75 Cal.App.4th 707, 717; *People v. Strong, supra*, 87 Cal.App.4th at p. 344.) Here, we conclude the trial court did not abuse its discretion in refusing to strike defendant's prior conviction.

IV. DISPOSITION

The judgment is affirmed.

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KING
J.

We concur:

McKINSTER
Acting P. J.

MILLER
J.