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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS CHARLES SALAS,

Defendant and Appellant.

F063143

(Super. Ct. No. VCF229182, VCF211418)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Brett R. Alldredge, Judge.

Eleanor M. Kraft, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and R. Todd Marshall, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Cornell, J., and Detjen, J.

In an information filed August 5, 2010, it was alleged that appellant, Carlos Charles Salas, committed three counts of indecent exposure in violation of Penal Code section 314, subdivision (1) (section 314(1))¹ (indecent exposure; counts 1, 2, 3), and that he had suffered a prior conviction of that offense, served two separate prison terms for prior felony convictions (§ 667.5, subd. (b)), and previously suffered a “strike.”² On December 3, 2010, appellant pled not guilty by reason of insanity.

On March 28, 2011 (March 28), the date set for trial on the guilt phase, appellant pled no contest to each of the charges and admitted the special allegations, and it was agreed appellant would proceed to trial at a later date on the issue of whether he was sane at the time of the charged offenses.

On April 27, 2011, a jury found appellant sane at the time of the instant offenses.

On June 14, 2011, appellant requested, pursuant to section 1385, that the court strike his strike conviction. The court denied that request and imposed a prison term of six years, consisting of the two-year midterm on count 1, doubled pursuant to the three strikes law (§§ 667, subd. (e)(1); 1170.12, subd. (c)(1)), for a total of four years, plus one year on each of the two prior prison term enhancements. On each of counts 2 and 3 the court imposed concurrent four-year terms.

On appeal, appellant contends the court erred in sentencing him under the three strikes law because, he asserts, the prosecution did not plead and prove that he had suffered a strike conviction.

¹ All statutory references are to the Penal Code.

² We use the terms “strike,” in its noun form, and “strike conviction” as synonyms for “prior felony conviction” within the meaning of the “three strikes” law (§§ 667, subds. (b)-(i); 1170.12), i.e., a prior felony conviction or juvenile adjudication that subjects a defendant to the increased punishment specified in the three strikes law.

PROCEDURAL BACKGROUND

In the information, it was “alleged pursuant to Penal Code sections 1170.12(a) through (d) and 667(b) through (i) ... that [appellant] has suffered [a] prior conviction of a serious or violent felony or juvenile adjudication,” viz., a conviction on July 16 1992, in Tulare County Superior Court case No. 32283 (case No. 32283) of assault with a deadly weapon other than a firearm or by means of force likely to produce great bodily injury, in violation of former section 245, subdivision (a)(1) (section 245(a)(1)).³

As indicated above, appellant entered his no contest pleas on March 28. Early in that proceeding, after an off-the-record discussion, the court stated its understanding that appellant had agreed to “plead to the sheet for the purposes of admitting guilt” to the charges set forth in the information filed August 5, 2010, that he had “pled alternately to not guilty by reason of insanity,” and he “will not waive that alternate plea for the purposes of that portion of a trial which will be convened in a few weeks.”

Moments later, in explaining the possible consequences of such a plea, the court advised appellant he could receive a prison sentence of up to 10 years. Appellant confirmed he understood that.

Later, in the proceeding, there appeared to be some confusion as to whether a conviction of violating section 314(1), as charged in each of the three counts in the information, would qualify as a strike in any future felony prosecution. The prosecutor clarified that none of the section 314(1) counts qualified as a strike, but noted, “[appellant] has a prior strike ...” Defense counsel confirmed that “[the information] makes reference to the prior strike.” At that point, the following exchange took place:

³ All references to section 245(a)(1) are to this former version.

“THE COURT: All right. This [i.e., a violation of section 314(1)] is not a strike. Do you understand that because of your previous strike the court can enhance your sentence, that is what gets us to the 10 years, do you understand that?

“[Appellant]: That I do, Your Honor.”⁴

Thereafter, the court told appellant, inter alia, that the People had alleged that he had committed “indecent exposure with priors,” that he had suffered two prior convictions “pursuant to Penal Code section 667.5(b),” and that “[the People] are alleging that pursuant to Penal Code section 1170.12 (a) through (d) and 667.5 (b) through (i) [*sic*] you suffer[ed] a conviction in case 32283 for Penal Code Section 245(A)(1), a conviction was suffered on July 16, 1992.”⁵ The court asked appellant, “... do you admit those priors as I specifically articulated to you?” Appellant responded, “I do.”

DISCUSSION

Appellant argues the court erred in imposing sentence under the three strikes law because, he asserts, the prosecution did not plead and prove that appellant suffered a strike conviction. This assertion is based, in turn, on the claim that appellant “did not admit, and was not specifically asked to admit” that the offense upon which the strike allegation was based was, in fact, a strike. The record belies this claim.

The three strikes law is set forth in two separate, but substantively identical statutes: section 667, subdivisions (b) through (i), the version enacted by Legislature, and section 1170.12, which contains five subdivisions, (a) through (e), the version added by initiative. The court, although it misspoke in citing the legislatively enacted version,

⁴ Later in the hearing, the court corrected itself, advising appellant that the maximum sentence that could be imposed was 10 years 8 months.

⁵ The court misspoke. As indicated above, the information alleged a prior conviction of section 245(a)(1) under section 667, subdivisions (b) through (i), not section 667.5, subdivisions (b) through (i).

specifically and correctly referred to the version of the three strikes law set forth in section 1170.12, telling appellant the People had alleged a 1992 section 245(a)(1) conviction “pursuant to” subdivisions (a) through (d) of section 1170.12.⁶ And immediately thereafter the court asked appellant if he admitted that and other prior conviction allegations, “as I *specifically articulated* to you.” (Italics added.) By admitting the allegation that he had suffered a prior conviction of violating section 245(a)(1) “as ... specifically articulated,” i.e., “pursuant to” the three strikes law, appellant admitted that he had suffered a prior conviction *and* that that conviction qualified as a strike.

Moreover, we note that prior to appellant entering his admission to the strike allegation, both the prosecutor and defense counsel referred specifically to appellant’s strike, and appellant affirmed, in response to a question from the court, that he understood that because of his strike he would receive the increased punishment mandated by the three strikes law. On this record, it is abundantly clear that appellant understood he was admitting a strike allegation.

It appears that appellant bases his contention that the prosecution did not plead and prove he suffered a strike conviction on two factors. First, although the information alleged a prior conviction of violating section 245(a)(1), a violation of that statute is not necessarily a strike. Section 245(a)(1) is a dual-pronged statute that punishes assaults “with a deadly weapon or instrument other than a firearm,” and assaults that are committed “by any means of force likely to produce great bodily injury.” (§ 245(a)(1).) To qualify as a strike, a prior conviction must be for a serious felony (as defined in

⁶ Subdivision (e) of section 1170.12, which the court did not mention, contains a provision restricting plea bargaining in cases in which a defendant is sentenced under the three strikes law to “all known” strikes. Subdivision (b) defines a strike conviction, subdivision (c) sets forth the prescribed punishments.

section 1192.7, subdivision (c)), or a violent felony (as defined in section 667.5, subdivision (c)). (§§ 667, subd. (d)(1), 1170.12, subd. (b)(1).) An assault with a deadly weapon is always a serious felony and thus a strike (§ 1192.7, subd. (c)(31)). However, an assault by means of force likely to produce great bodily injury is a serious felony only if the defendant “personally inflicts great bodily injury on any person, other than an accomplice, or ... personally uses a firearm” (§ 1192.7, subd. (c)(8)), or “personally used a dangerous or deadly weapon” (§ 1192.7, subd. (c)(23)), and such an assault is a violent felony only if the defendant “inflicts great bodily injury on any person other than an accomplice” under certain enumerated statutes or “uses a firearm” (§ 667.5, subd. (c)(8)) under other certain enumerated statutes. Because the record does not establish that the prior conviction alleged as a strike was a conviction of a serious or violent felony, appellant suggests that the court’s finding that appellant suffered a strike was based on “insufficient evidence.”

Second, appellant argues that the record demonstrates the true finding on the strike allegation was based on “incorrect ... evidence.” In this regard, he notes the following: The information alleged as a strike a July 16, 1992 section 245(a)(1) conviction in case No. 32283. However, the report of the probation officer (RPO) indicates that although appellant suffered a prior conviction of that offense on that date, it was not in case No. 32283. Rather, according to the RPO, appellant suffered a conviction of violating “[section] 245(a)” on July 16, 1992, in Tulare County Superior Court case No. TCF040523-92. In case No. 32283, the RPO indicates, appellant was convicted in 1993, not 1992, of violations of 245(a)(1) and 245, subdivision (c) (assault with a deadly weapon other than a firearm or by means of force likely to produce great bodily injury on a peace officer or fireman). Although the latter offense qualifies as a strike, neither of these convictions was alleged as a strike in the instant case.

Appellant's claims that the evidence was "incorrect," or insufficient to support the true finding on the strike allegation, are foreclosed by his admission of that allegation. A plea of guilty or no contest "admits all matters essential to the conviction." (*People v. DeVaughn* (1977) 18 Cal.3d 889, 895. "Admissions of enhancements are subject to the same principles as guilty pleas. [Citation.] A guilty plea admits every element of the offense charged and is a conclusive admission of guilt. [Citations.] *It waives any right to raise questions about the evidence, including its sufficiency.* [Citation.]" (*People v. Fulton* (2009) 179 Cal.App.4th 1230, 1237, italics added, disapproved on another point in *People v. Maultsby* (2012) 53 Cal.4th 296, 303-304.) "A defendant may admit an enhancement for a variety of reasons: as part of a plea bargain, ...; to obtain a perceived tactical advantage, such as keeping the convictions from the ken of the jury, ...; because he believes it futile to contest the prosecution's proof; or simply because he honestly knows the allegations to be true." (*People v. Thomas* (1986) 41 Cal.3d 837, 844.)

The case of *People v. Pinon* (1979) 96 Cal.App.3d 904 is instructive. There, the defendant had pled guilty to possession of a firearm by a convicted felon. (*Id.* at p. 907.) On appeal, he argued "that the plea was invalid because the record does not reflect a factual basis for the plea and that his prior conviction was a misdemeanor, not a felony." (*Ibid.*) The court in *Pinon* recognized the claim went "to the question of guilt or innocence" and that the issue had "been 'removed from consideration' by the guilty plea. [Citation.]" (*Id.* at p. 910.) The court reasoned that the issues "sought to be raised do not attack the proceedings resulting in the plea. Rather, defendant's contention that the prior conviction was a misdemeanor rather than a felony, and the related contention that counsel was incompetent, go solely and directly to the question whether he was in fact guilty of the charged offense. However, his plea of guilty 'operated to remove such issues from consideration as a plea of guilty admits all matters essential to the

conviction.’ [Citations.] Consequently, these issues are simply not cognizable on the present appeal, whether or not defendant obtained a certificate of probable cause.” (*Ibid.*)

The case of *People v. Lobaugh* (1987) 188 Cal.App.3d 780 is also instructive. In that case, the defendant pled guilty to robbery and admitted, inter alia, a firearm use enhancement allegation. On appeal, the defendant sought to challenge the sufficiency of the evidence to support the firearm use enhancement. (*Id.* at p. 785.) Although the defendant had failed to secure a certificate of probable cause, the appellate court concluded the issue would not have been cognizable on appeal even if the trial court had granted a certificate of probable cause, reasoning that “any error relating to the sufficiency of the evidence does not go to the legality of the proceeding, was waived by his guilty plea and may not be raised on appeal.” (*Ibid.*)

Although the three strikes law is not, strictly speaking, an enhancement, the forgoing principles governing guilty pleas and admissions of enhancements apply with equal force to admissions of strike allegations. (See *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 527 [“The Three Strikes law ... articulates an alternative sentencing scheme for the current offense rather than an enhancement”].) Appellant’s admission of the strike allegation precludes appellate review of any claim that the evidence supporting that allegation was insufficient or “incorrect.”

DISPOSITION

The judgment is affirmed.