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

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES ANTHONY DAVIS,

Defendant and Appellant.

F070082

(Super. Ct. No. F13905596)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Gary D. Hoff, Judge.

Robert L. Angres, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, and Louis M. Vasquez, Deputy Attorney General, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Franson, J. and McCabe, J.†

† Judge of the Superior Court of Merced County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Appellant Charles Anthony Davis appeals the sentence imposed following his conviction for failing to update his registration as a sexual offender. (Pen. Code, § 290, subd. (b).)¹ Appellant alleges the trial court wrongly refused to strike eight of his nine prior convictions for the purposes of sentencing. For the reasons set forth below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On April 8, 2014, appellant was charged by first amended information with one count of failing to update his registration as a sexual offender under section 290, a felony, and one count of annoying or molesting a child under section 647.6, subdivision (a), a misdemeanor. It was further alleged that appellant had suffered nine prior serious felony convictions, including for robbery in 1981, attempted burglary, kidnapping, burglary, attempted forcible rape, oral copulation, and two counts of forcible rape in 1984, and attempted rape in 1993.

Appellant's charges arose from a June 12, 2013 incident involving a 13-year-old female. When the minor arrived at the apartment of her friend, where appellant, her friend's grandfather, was also residing, appellant was sitting outside. Appellant told the minor that her friend was inside, preparing to go swimming. He told the minor she could wait with him outside. The minor sat down on the steps and appellant proceeded to sit outside with her while smoking cigarettes and drinking beer.

After a while, a visitor arrived at the apartment. The minor told him she was waiting for her friend, to which he responded that the minor's friend was not, in fact, home. The minor then attempted to leave, but appellant told her to come back. The minor complied. Appellant then entered the apartment, leaving the door slightly ajar so that the minor could see his head but not his body, and asked the minor: "Can I show you something?" The minor responded, "That depends on what you want to show me," to

¹ All statutory references are to the Penal Code unless otherwise noted.

which appellant said, “Can you spread your legs?” The minor responded by saying her parents were calling and left.

The incident was reported to the police. The minor felt that appellant had wanted to show her his “private area” and, at a later follow-up interview, claimed appellant had been masturbating in front of her. Appellant initially claimed the minor had merely sat with him for approximately 30 minutes. In a later probation interview, appellant alleged the minor was lying and had been wearing “skimpy” shorts.

In the course of the investigation into this incident, appellant was identified as a registered sex offender. His last recorded registration was in April 2012, and there was no indication he had completed his required annual registration in April 2013. Appellant explained he had come to Fresno from Louisiana intending to only stay a short period of time, but that he had suffered a heart attack and had forgotten to register, thus also failing to register within five days of coming to Fresno. Appellant claimed both that he intended to return to Louisiana shortly and that he intended to register the day following his arrest. Appellant had no prior convictions for failing to register and, after being released from prison approximately 10 to 12 years prior to this incident, had only two misdemeanor convictions for driving offenses in 2006.

On April 8, 2014, appellant pled nolo contendere to the charge of annoying or molesting a child. Then, on April 9, 2014, appellant pled nolo contendere to the charge of failing to register and admitted to the nine alleged prior strike convictions. Prior to sentencing, appellant filed a *Romero*² motion, seeking to have eight of his prior convictions struck for the purposes of sentencing. In arguing his prior convictions should be struck, appellant credited the extensive therapy he had undergone with helping him stay crime free and noted he had registered a nearby address in the past. He claimed his conduct toward the minor was not improper, alleging she “was sitting there with some

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

skimpy shorts on showing her little underwear” and that he “told her to close her legs or go downstairs.” Appellant requested a six-year sentence be imposed.

The trial court rejected appellant’s *Romero* motion. The court stated that relief might be appropriate if the charges were merely a technical violation of the registration requirements due to appellant’s decreasing criminality and admission of wrongdoing, but concluded appellant’s conduct toward the minor in the related misdemeanor charge was too concerning to justify striking appellant’s prior convictions. Appellant was thus sentenced to a term of 25 years to life. This appeal timely followed.

DISCUSSION

Appellant contends the trial court abused its discretion when denying his *Romero* motion and argues appellant should have been treated as a one-strike offender.

I. Standard of Review and Applicable Law

In *Romero*, the California Supreme Court held that trial courts have discretion to dismiss or strike allegations of prior felony convictions. (*Romero, supra*, 13 Cal.4th at pp. 529-530.) “[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[, subdivision] (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.” (*People v. Williams* (1998) 17 Cal.4th 148, 161.)

The analysis whether an offender may be deemed outside the spirit of the law is a stringent one. (*People v. Carmony* (2004) 33 Cal.4th 367, 377 (*Carmony*).) And there is a strong presumption that any sentence that conforms to the Three Strikes law’s sentencing scheme is rational and proper. (*Id.* at p. 378.) “Because the circumstances

must be ‘extraordinary ... by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he squarely falls once he commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack’ [citation], the circumstances where no reasonable people could disagree that the criminal falls outside the spirit of the three strikes scheme must be even more extraordinary.” (*Ibid.*)

We review the trial court’s decision for an abuse of discretion. (*Carmony, supra*, 33 Cal.4th at p. 375.) An abuse of discretion is not shown merely because reasonable people might disagree about whether to strike a prior conviction. Where the record is silent, or where it “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, even if we might have ruled differently in the first instance.” (*Id.* at p. 378.)

II. The Trial Court Did Not Abuse Its Discretion

Appellant argues that his conviction for failing to register is merely a technical violation, which posed no danger to society and did not show an attempt to evade law enforcement. Relying primarily on *People v. Cluff* (2001) 87 Cal.App.4th 991 (*Cluff*), appellant contends that such harmless technical violations result in a disproportionate sentence when subject to the three-strike sentencing scheme, particularly where the defendant has lived a relatively crime-free life since his last conviction. We do not agree.

In *Cluff*, the defendant had done nothing more to warrant his arrest than fail to register on his birthday as required. As the court explained, the defendant had remained living at the same address he had used to register for several years previously and his failure to register “did not demonstrate recidivist tendencies toward child molestation.” (*Cluff, supra*, 87 Cal.App.4th at pp. 1002, 1004.) Such is not the case here. While appellant contends he was residing close to an address he had previously registered, the facts show his last registered address was in Louisiana and that he had been residing in

Fresno for some extended period of time without registering. These facts are sufficient to support finding some intent on the part of appellant to avoid police detection as there would be no way for the police to locate appellant when relying on any of his prior registered addresses. Further distinguishing *Cluff*, the facts in this case show appellant's whereabouts were actually discovered because he had attempted to masturbate in front of a minor. The court certainly did not abuse its discretion by considering the fact that appellant pled guilty to such conduct.

Accepting appellant's argument that he must be treated as a one-strike offender due to the technical nature of his current felony, despite the fact he was at a location unknown to police and found due to his conduct towards a minor, would result in the same type of error reversed in *Carmony*. There, the California Supreme Court found that such focus "on a single factor" would not only improperly substitute our judgment for the trial court's but also eviscerate the trial court's discretion in these matters. (*Carmony, supra*, 33 Cal.4th at p. 377.) Ultimately, the trial court was presented with multiple facts that both supported and refuted striking appellant's prior felony convictions. Given these facts, we conclude this is not the type of exceptional case where no reasonable person could disagree that the criminal falls outside the spirit of the three strikes scheme. Because 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 find no abuse of discretion. (*Carmony, supra*, 33 Cal.4th at p. 376.)

DISPOSITION

The judgment is affirmed.