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

THE PEOPLE,

Plaintiff and Respondent,

v.

RAYMOND LANELL TOMLIN,

Defendant and Appellant.

F070671

(Super. Ct. No. F14903535)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. F. Brian Alvarez, Judge.

Meredith J. Watts, 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, Kathleen A. McKenna and William K. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Poochigian, Acting P.J., Franson, J. and Peña, J.

Appellant Raymond Lanell Tomlin pled no contest to possession of ammunition by a person prohibited from possessing a firearm (Pen. Code, § 30305, subd. (a)).¹ Tomlin also admitted a prior prison term enhancement (§ 667.5, subd. (b)) and allegations that he had a prior conviction within the meaning of the Three Strikes Law (§ 667, subd. (b)-(i)).

On appeal, Tomlin contends the court abused its discretion when it denied his *Romero*² motion. We affirm.

FACTS

On March 18, 2014, Fresno police officers were dispatched to a location in Fresno regarding a disturbance involving a person who was armed with a gun. Upon arriving at the location, the officers saw Tomlin, who matched the description of the person who was reportedly armed. Officers handcuffed Tomlin and from his waistband removed a plastic airsoft handgun that was missing an orange tip and resembled a real firearm. The officers checked Tomlin and discovered he was a parolee at large with an outstanding warrant. An officer then searched Tomlin and found three nine-millimeter bullets and a 10-millimeter bullet in Tomlin's front pants pocket.

Tomlin's probation report indicated that he was 31 years old when he committed the instant offense. Tomlin was raised primarily by his grandmother, who physically abused him. Tomlin began smoking marijuana at age five, drinking alcohol at age 12, using cocaine and PCP when he was a teenager, and using methamphetamine and ecstasy when he was 20 years old. Tomlin had been diagnosed with anxiety and depression for which he had taken psychotropic medication, and he had attempted suicide and expressed suicidal ideation in the past.

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

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

In 1997, as a juvenile, Tomlin was adjudicated of attempted grand theft from the person of another (§§ 664/487, subd. (c)) and in 1999 of vehicle theft (Veh. Code, § 10851, subd. (a)). He was committed to the California Youth Authority for this last adjudication and was dishonorably discharged on May 4, 2005.

As an adult, in 2002, Tomlin was convicted of misdemeanor infliction of corporal injury on a spouse or cohabitant (§ 273.5, subd. (a)). In that matter, he failed to appear at court hearings three times and violated his misdemeanor probation at least four times. Additionally, in 2003, while on probation, he was convicted of two counts of disturbing the peace.

In 2005, Tomlin was sentenced to an eight-year prison term on his convictions for robbery (§ 211) and false imprisonment for purposes of avoiding arrest (§ 210.5). He was paroled on August 30, 2009.

In 2010, Tomlin was convicted of being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a)). From June 22, 2010, through January 29, 2011, Tomlin violated his parole on four separate occasions. In June 2012, he was convicted of resisting arrest (§ 148, subd. (a)(1)). Tomlin was on parole and misdemeanor probation when he committed the instant offense.

Tomlin's prior strike was based on his 2005 robbery conviction. A probation report attached to Tomlin's *Romero* motion provided the following details of that conviction and his 2005 false imprisonment conviction. On December 3, 2003, Denise Ponce and her 20-month-old son were sleeping in her bedroom when Tomlin broke open the locked bedroom door holding a gun in his left hand and pointing it in her direction. Tomlin picked up the child and told Ponce, "Give me all your money and give me all your identification cards." He then put the gun to the child's head and threatened to kill him if she did not comply. Ponce gave Tomlin approximately \$200 and her California Identification card and told him to return the child. Tomlin refused and ran out of the house with the child. Ponce ran after him and found the child in the front yard.

At the beginning of Tomlin's sentencing hearing on October 15, 2014, the court denied Tomlin's *Romero* motion stating:

"I want to make very clear that this is not just about four bullets, this is basically a look at a recidivist offender's continuing failure to abide by the law. Mr. Tomlin, you were in trouble in Sacramento in 2012. You had a misdemeanor violation of Penal Code section 148. I would also note that at the time that you committed the instant offense, you were on parole. I believe you had a warrant according to the report also. So this isn't just about four bullets, this is really about a failure to comply with the terms and conditions and the rules and catching a new felony case."

The court then struck Tomlin's prior prison term enhancement and sentenced him to a four-year prison term, the middle term of two years, doubled to four years because of Tomlin's strike conviction.

DISCUSSION

Tomlin contends that the court abused its discretion when it denied his *Romero* motion because he did not have a significant criminal record, his strike offense involved a low level of violence, and he suffers from problems (e.g. mental issues and alcohol and drug addiction) that require supportive residential treatment. We disagree.

Section 1385, subdivision (a) gives the trial court the discretion to strike an allegation that a defendant has previously been convicted of a felony if the dismissal is in furtherance of justice. (*Romero, supra*, 13 Cal.4th at p. 508.) "[T]he order striking such allegations ... embodies the court's determination that, "in the interest of justice" [the] defendant should not be required to undergo a statutorily increased penalty which would follow from judicial determination of [the alleged] fact.'" (*Ibid.*)

In deciding whether to strike a prior conviction, "the court in question must consider whether, in light of the nature and circumstances of [the defendant's] 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.)

We review a trial court’s decision not to dismiss a prior strike conviction under the deferential abuse of discretion standard. (*People v. Carmony* (2004) 33 Cal.4th 367, 374.) We will not find abuse unless the trial court’s decision was “so irrational or arbitrary that no reasonable person could agree with it.” (*Id.* at p. 377.) When the record shows the trial court considered relevant factors and acted to achieve legitimate sentencing objectives, the court’s decision will not be disturbed on appeal. (*People v. Myers* (1999) 69 Cal.App.4th 305, 310.)

Here, the court considered the relevant circumstances of Tomlin’s current offense and those underlying the three strikes allegation before denying Tomlin’s *Romero* motion because this information was contained in his current probation report and the report attached to the motion. These reports disclosed that although Tomlin was only 31 years old when he committed the underlying offense, he already had a substantial and serious prior record. Tomlin’s robbery strike offense was particularly egregious because he accomplished the robbery by pointing a handgun at a child’s head while threatening the child’s mother that he would shoot the child if she did not comply with his demands. Additionally, Tomlin failed to appear at court hearings on several occasions, he violated his parole and probation several times, and he committed all his adult offenses while he was on probation and/or parole. Although Tomlin’s robbery conviction was approximately nine years old when he committed the instant offense, he was in custody on that conviction until August 30, 2009. And after his release, he violated his parole several times and he was convicted of two misdemeanor offenses in addition to committing the instant offense while on parole and misdemeanor probation. Moreover, Tomlin’s strike conviction resulted in a net increase in Tomlin’s sentence of only one

year because the court struck the prior prison term enhancement.³ These circumstances amply support the court's implicit conclusion that Tomlin was not outside the spirit of the three strikes law and its decision not to strike his prior strike conviction. They also refute Tomlin's contention that he did not have a significant criminal record and that his strike offense involved a low level of violence. It is also clear from the record that the court considered, but did not find persuasive, Tomlin's mental health and substance abuse issues. Thus, we conclude that the court did not abuse its discretion when it denied Tomlin's *Romero* motion.

DISPOSITION

The judgment is affirmed.

³ Based on the two-year middle term imposed, had the court struck Tomlin's prior strike conviction, but not his prison term enhancement, it would have sentenced him to an aggregate three-year term, the middle term of two years on the substantive offense and a one-year enhancement term.