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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID DANIEL VEGA,

Defendant and Appellant.

G046736

(Super. Ct. No. 08CF1081)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David A. Thompson, Judge. Affirmed.

Valerie G. Wass, 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, Peter Quon, Jr., and Quisteen S. Shum, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

A jury convicted David Daniel Vega of reckless driving while fleeing a police officer (Veh. Code, § 2800.2; count 1), felon in possession of a firearm (former Pen. Code, § 12021, subd. (a); count 2; all statutory references are to the Penal Code unless otherwise stated), and unlawful vehicle taking (Veh. Code, § 10851, subd. (a); count 4). The jury acquitted him of gang-related charges and enhancements. The trial court found Vega previously suffered four prior convictions within the meaning of the “Three Strikes” law (§§ 667, subds. (d) & (e)(1); 1170.12, subds. (b) & (c)(1)) and served two prison terms (§ 667.5, subd. (b)). Vega contends the trial court abused its discretion by failing to strike his prior “strike” convictions. In a supplemental opening brief, Vega argues he should be resentenced under the ameliorative provisions of Proposition 36, the November 7, 2012 amendment to sections 667 and 1170.12 which conceivably reduces his sentence from 25 years to life to a lesser determinate term. We affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

In December 2007, Mario Flores loaned his 2006 Nissan to Vega with the understanding Vega would return the car in an hour. Five days later Vega still had not returned the car, and Flores reported the matter to the police.

On April 5, 2008, Santa Ana police officers attempted to stop Vega for a traffic violation. Vega led the officers on a high-speed pursuit, violating numerous Vehicle Code provisions, which concluded when Vega spun out and came to a stop. Vega threw an unloaded semiautomatic handgun from the car before he emerged. He struggled with the officers, who “Tasered” him twice before taking him into custody.

Vega testified Flores sold him the Nissan, but Vega failed to make payments as promised. Vega admitted to being a heroin and methamphetamine addict

and had been using methamphetamine with companions when the officers approached. He fled because he had violated his recent parole by failing to report to his parole officer and he did not want to return to prison. He claimed the handgun was not his, explaining he noticed it on the floor near the front passenger seat during the pursuit and threw it from the car because he feared getting shot. He denied fighting with the officers. He admitted belonging to the Los Compadres gang in 1994, but denied being an active participant in the gang when arrested in this case.

Following trial in July 2009, the jury convicted Vega of the charges listed above. In September 2009, the trial court found Vega previously had suffered four serious or violent convictions constituting strikes under the Three Strikes law, including two 1994 robbery convictions, a third robbery conviction also in 1994, and aggravated assault by an inmate not serving a life sentence in 2000 (§ 4501). Two of the convictions also qualified for one-year prison term enhancements (§ 667.5, subd. (b)). Vega asked the court at his sentencing hearing to strike his prior convictions under section 1385. The trial court declined to strike the prior convictions and imposed concurrent terms of 25 years to life for each of the current convictions.

II

DISCUSSION

A. *The Trial Court Did Not Abuse Its Discretion in Declining to Strike Vega's Prior Strike Convictions*

Vega contends the trial court abused its discretion when it declined to strike his prior convictions in the interests of justice. (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*); § 1385.)¹ The Three Strikes law was “designed to

¹ Section 1385 provides, “(a) The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of

increase the prison terms of repeat felons” (*Romero*, at p. 504) within a spirit of ““the fair prosecution of crimes properly alleged.” [Citation.]” (*Id.* at p. 531.) In *Romero*, the Supreme Court concluded section 1385, subdivision (a), permits a trial court to exercise its discretion to strike a prior felony conviction in the interests of justice. But courts may not dismiss prior convictions solely to accommodate judicial convenience or relieve court congestion. (*Romero*, at p. 531.) Nor may the court strike a prior solely in exchange for a guilty plea, or because the court dislikes the lengthy sentence a defendant must serve under the Three Strikes law. (*Id.* at p. 530.)

The standard for ruling on a *Romero* motion, and for our review, is “whether, in light of the nature and circumstances of [a 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.) Our review is “deferential,” not de novo; the issue is whether the trial court’s decision “falls outside the bounds of reason.” (*Id.* at p. 162.)

Vega argued below the court should strike the prior convictions because his current offenses were not “violent or life threatening,” his prior offenses were remote in time and arose from a limited period of felonious behavior, and at the time of sentencing he was 39 years old and “ripe for rehabilitation.” Vega expressed remorse and asked for a chance to shed his drug addiction and to become a law-abiding citizen.

justice, order an action to be dismissed. The reasons for the dismissal must be set forth in an order entered upon the minutes. No dismissal shall be made for any cause which would be ground of demurrer to the accusatory pleading.”

The trial court agreed Vega did not target or harm specific victims, and his current crimes did not constitute statutorily defined serious or violent behavior. The court acknowledged the prosecution could have filed Vega's reckless evading and vehicle theft offenses as misdemeanors, Vega's prior robbery convictions occurred before enactment of the Three Strikes law, and two of the robberies occurred during a single episode. The court also noted these robberies occurred 17 years earlier and arguably constituted a brief period of aberrant behavior when Vega was a relatively young man, and Vega's most recent felony conviction occurred 10 years earlier.

But the trial court found the current crimes were "not trivial" and Vega's failure to stop the stolen vehicle for officers "jeopardized the safety of many residents as well as the pursuing officers." Vega possessed a firearm and physically resisted the officers' efforts to arrest him. The court emphasized Vega's prior crimes involved force and violence, including robbing parked motorists of personal property and stabbing a fellow inmate during a prison fight, and his past performance on probation and parole was poor. He committed the third robbery while on probation for the prior robberies, and committed the current offenses while on parole and within one month of his release from prison. Vega already had avoided a Three Strikes sentence when a court exercised leniency in 2000 and sentenced him as a second strike offender. Vega had "not demonstrated effective reform and rehabilitation during the past 17 years spent primarily either in prison or on parole."

The trial court also found Vega's personal background was unfavorable. He joined a criminal street gang at age 14. He was expelled from high school. He began abusing alcohol at age 12, had a long substance abuse history, and abused marijuana, cocaine, methamphetamine and heroin on a daily basis. Vega had not taken steps to

overcome his addiction either in custody or in the community. Nor did he take “advantage of the opportunity afforded to him upon his release on parole” in 2007 and “instead proceeded to commit additional crimes.” The court stated it was “dissatisfied with the sentencing alternatives in [the] case,” but after careful consideration there were no “extraordinary circumstances” placing Vega “beyond the spirit and scope of the Three Strikes law.”

The trial court considered Vega’s background, character, and prospects, and weighed the relevant sentencing factors before declining to strike the prior convictions. Vega has not shown the court’s decision was arbitrary or irrational. Put another way, “[i]t is not enough to show that reasonable people might disagree about whether to strike one or more of [defendant’s] prior convictions. 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.) We discern no abuse of discretion.²

B. Vega is Not Entitled to Automatic Resentencing Under Proposition 36, the Three Strikes Reform Act of 2012

In a supplemental brief, Vega argues he is entitled to be resentenced under the Three Strikes Reform Act of 2012 (Reform Act), enacted as part of Proposition 36, because his conviction was not final at the time the Reform Act became effective and the offenses for which he was convicted are neither serious nor violent felonies. We initially agreed with his position, but the Supreme Court granted review and transferred the cause

² Vega states the court “abuses its discretion when it fails to avoid an unconstitutionally disproportionate sentence by failing to dismiss strike convictions.” We do not read this statement as a claim the imposed sentence constituted cruel and unusual punishment under the state or federal Constitutions, and we do not address that issue.

back to this court with directions to vacate the decision and reconsider the matter in light of *People v. Conley* (2016) 63 Cal.4th 646 (*Conley*). *Conley* holds persons whose judgments were not yet final at the time the Reform Act passed on November 7, 2012, are not entitled to automatic resentencing and must instead petition for recall of sentence under section 1170.126.³ Accordingly, Vega’s argument fails. (See *Conley, supra*, at p. 662, fn. 5 [defendant with nonfinal judgment litigating question of automatic resentencing generally has good cause to file late petition for recall].)

III

DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.

³ We hereby grant the Attorney General’s motion for judicial notice of excerpts from the Official Voter Information Guide prepared by the Secretary of State for the November 6, 2012 election insofar as it concerns Proposition 36, which enacted the Three Strikes Reform Act of 2012.