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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.

CHARLES DAYTON LANGSDON,

Defendant and Appellant.

G047214

(Super. Ct. No. 08CF2943)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Carla M. Singer, Judge. Affirmed.

Nancy Olsen, 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 Julianne Karr Reizen, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

A jury convicted defendant Charles Dayton Langsdon of one count of second degree robbery, count 1 (Pen. Code, § 211; all further statutory references are to the Penal Code), one count of attempted second degree robbery, count 2 (§§ 664, subd. (a); 211), and one count of felony possession of a controlled substance, count 3 (Health & Saf. Code, § 11350, subd. (a)). In a bifurcated trial, the court found true defendant had previously been convicted of four strike offenses (§§ 667, subds. (b)-(i); 1170.12, subds. (b) & (c)(2)(A)), suffered two prior serious felony convictions (§ 667, subd. (a)(1)), and suffered two prior felony convictions resulting in prison terms (§ 667.5, subd. (b)). The court sentenced defendant to a prison term of 35 years to life consisting of 25 years to life on count 1 plus consecutive 5-year sentences for two prior serious felony convictions. The court stayed a 2-year term on count 2 and an 8-month sentence on count 3. The court struck the prior strike convictions as to counts 2 and 3 and struck the remaining prior convictions as to all counts.

In his appeal, defendant alleges the court abused its discretion in refusing to strike all or some of his prior strike conviction as to count 1. He also contends that, because his sentence is the functional equivalent of a life sentence, the sentence constitutes cruel and unusual punishment.

Considering defendant's criminal background, the court did not abuse its discretion and we affirm the judgment.

FACTS

Defendant tried to rob a Bank of America branch. He entered the branch and presented the teller with a note reading, "This is a robbery. All loose 100's, 50's, 20's. No dye packs, or tracking devices. I have explosive devices – do as told no one gets hurt. Remain calm, be discret (*sic.*) and make to (*sic.*) contacts for 5 mins after I'm gone." The teller locked her cash drawer, pressed a silent alarm and walked away. She

walked to her branch supervisor, telling him she was getting robbed. The supervisor pressed an alarm and walked the teller to a back room. Defendant left the bank without any money. Defendant's fingerprints were found on the demand note.

A week later, defendant met with greater success. He persuaded Juan Salazar to drive him to a credit union, telling Salazar he intended to get a wire transfer from his sister. Defendant presented the teller with a note reading, "This is a robbery. I'm armed with a weapon and my brother is outside with explosives. Give me the loose \$100.00's, \$50.00's, \$20.00's in your drawer. No dye packs, tracking devices – no alarms. Contact no one and notify no one for 5 mins after I'm gone. No one will get hurt if you do as told. . . ." The teller gave defendant \$1,234. Here also, his fingerprints were found on the demand note.

After his arrest, defendant was found to possess a usable quantity of heroin.

DEFENDANT'S CRIMINAL HISTORY

In 1985, defendant, then age 17, suffered three sustained juvenile petitions in Oregon for possession of marijuana, theft of United States mail, theft, and forgery. This resulted in commitment to a boys' ranch.

A year or so later, now an adult, he started on a series of crimes. Between ages 18 and 23 charges were filed against him on some nine different occasions for crimes ranging from forgery and burglary to escape. In 1993, by the time he had reached his 24th birthday, he committed his first bank robbery, resulting in a 100 month (8 years, four months) sentence in federal prison. He was placed on supervised release in 2000, and in 2007 violated parole and was sentenced to another two years. Shortly after his release, defendant was arrested for possession of marijuana and methamphetamine. He was placed on supervised probation for 88 months (7 years, four months). Finally in 2008, defendant was sentenced to 30 days in jail for possessing drug paraphernalia while

he was still on probation for the earlier robbery and was living in a halfway house. During this jail term he sustained three documented incidents, including one for fighting in jail.

Before sentencing, defendant sent a lengthy letter to the court, recognizing that his life had “been a tragedy, vile, disgusting, a shame and miserable at best. Simply put, my life has been controlled by a drug addiction. Drugs became a huge problem in my life.” He stated that in “2009 I gave my life to the lord Jesus Christ as my personal savior. So much has happened in the last 3 1/2 years its nothing short of amazing. God has given me a new heart Maam.” At the time of sentencing, defendant also presented a detailed statement acknowledging his prior life of crime and telling the court of his epiphany and conversion. The court was also presented with a letter from a parent whose son had encountered defendant in jail. According to the letter, defendant “[w]ith kindness, a gentle heart and great compassion . . . reached out to this complete stranger to pull him out of the despairing place in which he lay. Mr. Langsdon ministered to my son, was firm with him when necessary, but spoke kindly and gently to him and supported and strengthened him.”

Two sheriff’s deputies also wrote letters praising defendant’s conduct while in custody. Deputy Hall wrote “I have known Langsdon for approximately four years. In that time, I have witnessed a change in his life; more profound than any change I have seen in the nine years I have worked for the Orange County Sheriff’s Department.” Deputy Rivas sent a similar letter, stating “I believe Langsdon has been more that a ‘model inmate’ these last four years.”

Although the court was obviously moved by these references she stated, “I went to the trouble of speaking to both lawyers when your case was last set to inquire what can be done in this situation? What exactly do I have the discretion to do? And I am going to exercise a certain amount of discretion, but that’s not going to leave you with the result that you are looking for, which is a determinant sentence. [¶] This court does

intend to sentence you to 25 to life on count 1 for the bank robbery. And I'll be adding determinant time for the other two counts and striking strikes with respect to the other two counts." The court further stated "if you continue on the road that you've chosen now, I believe truly in my heart that you will be paroled." The court sentenced defendant accordingly.

DISCUSSION

1. The Court did not Abuse its Sentencing Discretion

Defendant states that the "court imposed the sentence of 25-years-to-life on count 1, plus the additional 10 years of sentence enhancement, based upon the mistaken belief that appellant would one day be paroled." He then explains, because he was 39 years old, an analysis of his life expectancy demonstrates the unlikelihood that he would live long enough to be eligible for parole. But defendant fails to provide authority for the implied proposition his age is relevant to whether prior serious or violent felony convictions should be struck under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. Considering defendant's history, the nature of the present crimes, and the spirit of the "Three-strikes" law, we can hardly conclude the court abused its discretion in not striking more of the priors. The result sought by defendant would have required the court to strike all the priors, which very likely would have been an abuse of discretion.

As the Attorney General notes, citing *People v. Carmony* (2004) 33 Cal.4th 367, 377, "[a] trial court has not abused its discretion unless its decision is so irrational or arbitrary that no reasonable person would agree with it." We cannot conclude the court's decision was irrational or arbitrary and therefore reject defendant's contention the court abused its discretion.

2. *Defendant Fails to Demonstrate the Sentence was Cruel and Unusual*

When determining if a penalty violates constitutional prohibitions against cruel and unusual punishment under either the federal or state Constitutions, we must ask whether it “is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity.” (*In re Lynch* (1972) 8 Cal.3d 410, 424; see also *Solem v. Helm* (1983) 463 U.S. 277, 290-292 [103 S.Ct. 3001, 77 L.Ed.2d 637]; *People v. Fairbank* (1997) 16 Cal.4th 1223, 1256.)

In determining whether a sentence violates the prohibition against cruel and unusual punishment in a Three strikes case, the court must consider a defendant’s criminal history. “In light of defendant’s individual circumstances and criminal history, the term imposed is not grossly disproportionate to the current offense and does not constitute cruel and unusual punishment in violation of the Eighth Amendment. Nor is the punishment ‘so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity.’” (*People v. Poslof* (2005) 126 Cal.App.4th 92, 109, fn. omitted [27-years to life for failure to register as a sex offender affirmed].)

The Attorney General points out that, when determining whether a sentence constitutes cruel and unusual punishment, courts use a three-prong analysis. A court must evaluate the nature of the offense and the offender, compare the sentence with those imposed for more serious offenses, and compare the sentence with those imposed for the same offense in other states. (*People v. Sullivan* (2007) 151 Cal.App.4th 524, 568-569; *In re Lynch, supra*, 8 Cal.3d at pp. 425-427.) In his argument defendant only dealt with the first prong. He failed to supply us with any information to suggest the sentence is disproportionate if compared with more serious offenses or discuss sentences imposed for the same offense in other states.

Defendant has failed to persuade us his sentence is cruel and unusual.

DISPOSITION

The judgment is affirmed.

RYLAARSDAM, J.

WE CONCUR:

O'LEARY, P. J.

IKOLA, J.