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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.

RONALD JORDAN,

Defendant and Appellant.

G049462

(Super. Ct. No. 11HF2340)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Steven D. Bromberg, Judge. Affirmed.

/Siri Shetty, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, A. Natasha Cortina and Minh U. Le, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

A jury convicted defendant Ronald Jordan of four counts of second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c)),¹ two counts of assault with a firearm (§ 245, subd. (a)(2)), and one count of conspiracy to commit robbery (§ 182, subd. (a)(1)). The jury found true allegations that defendant personally used a firearm in connection with the robbery and assault counts. (§§ 12022.53, subd. (b), 12022.5, subd. (a).) In a bifurcated proceeding, the court convicted defendant of possession of a firearm by a felon. (Former § 12021, subd. (a)(1).) The court also found true all prior conviction allegations against defendant, including a federal conviction for bank robbery that served as a prior strike (§§ 667, subds. (a)(1), (d), (e)(1), 667.5, subd. (c)(9), 1170.12, subds. (b), (c)(1), 1192.7, subd. (c)(19)), and two prison priors (§ 667.5, subd. (b)). The court sentenced defendant to 43 years in prison.

Defendant's sole contention on appeal is that the court abused its discretion by failing to dismiss or strike the prior bank robbery conviction allegations for purposes of sentencing. We affirm the judgment.

FACTS

Underlying Offenses

On November 10, 2008, defendant and two accomplices robbed a Bank of America location in Lake Forest, California. Each of the three perpetrators was armed and wore disguises. One perpetrator, who wore a straw hat, stood at the door as the lookout.² During the robbery, defendant hit a male bank employee in the head with the butt of his pistol after accusing the male employee of pressing an alarm. Meanwhile, an

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

² DNA evidence recovered from the straw hat suggested the lookout was Roderick Junior.

accomplice pointed his weapon at the assistant manager's head and demanded money. Defendant then pointed his gun at a female employee's head, demanding money. After the female employee provided defendant with cash, he ordered her to the ground; defendant kicked the left side of her body and hit her head with the tip of his gun. Defendant threatened the bank employees with death. Having collected nearly \$50,000 from various bank employees, defendant and his accomplices drove away in a stolen white sports utility vehicle. Four bank employees were present at the time of the robbery.

On September 5, 2009, police responded to a report of two men wearing fake mustaches, wigs, and black nylon stockings on their heads. The men were driving a silver sports utility vehicle, which police attempted to pull over. After initially fleeing, the driver, Joseph Keys, eventually surrendered. The passenger successfully fled on foot. Ultimately, however, DNA and other evidence proved defendant was the fleeing passenger.

Sentencing Hearing

A key factor at the sentencing hearing was defendant's January 1997 conviction in federal court for bank robbery (18 U.S.C. § 2113(a)). Defendant pleaded guilty to this offense, which involved defendant physically restraining employees and taking \$50,969 from a bank in Bakersfield, California. The federal court sentenced defendant to 137 months in prison, with 24 to 36 months of supervised release. In the instant case, this federal conviction was treated as a prior serious and/or violent felony for purposes of state law. (See §§ 667, subd. (a)(1), 667.5, subd. (c)(9), 1192.7, subd. (c)(19).)³

The court in this case sentenced defendant to 43 years in prison. On count 1 (second degree robbery), the court sentenced defendant to the maximum term of 10

³ Defendant asserted below that this conviction should not have been classified as a strike, but this argument is not advanced on appeal.

years in prison (§ 213, subd. (a)(2) [“two, three, or five years”]; § 667, subd. (e)(1) [where defendant has a prior strike, “determinant term . . . shall be twice the term otherwise provided as punishment for the current felony conviction”]), plus a consecutive 10 years for personally using a firearm (§ 12022.53, subd. (b)), for a total of 20 years on count 1. On counts 2, 3, and 4 (second degree robbery), the court sentenced defendant to consecutive two-year sentences, plus a consecutive three year, four month enhancement on each count for personally using a firearm, for a total of 16 years on counts 2, 3, and 4. (See § 1170.1, subd. (a) [determinate sentencing scheme provides for one-third the midterm for subordinate terms and one-third on the enhancements attached to those subordinate terms].) On counts 5 and 6 (assault with a firearm), the court stayed execution of sentence pursuant to section 654. On count 7 (conspiracy to commit robbery), the court sentenced defendant to a consecutive two years, bringing the tally to 38 years. On count 8 (felon in possession of a firearm), the court imposed a concurrent four-year sentence. Finally, the court imposed a consecutive five-year sentence for defendant’s serious felony prior (§ 667, subd. (a)(1)), bringing the total to 43 years in prison. The court struck, for purposes of sentencing, a prison prior that would have resulted in additional punishment. (See § 667.5, subd. (b).) Defendant does not suggest the court misinterpreted the relevant sentencing statutes or failed to calculate his sentence accurately.⁴

Instead, citing section 1385 and *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*), defendant argues the court should have dismissed or stricken the prior federal bank robbery conviction allegations, which greatly increased defendant’s maximum possible punishment. According to defendant, his maximum possible sentence would have been 17 years in prison had the court granted his motion to strike the prior strike. At the sentencing hearing, defendant emphasized the comparatively low sentences

⁴ The prosecutor’s sentencing brief argued that defendant was subject to a maximum of 56 years in prison and advocated for a sentence of 50 years.

received by his accomplices, Roderick Junior and Joseph Keys (one received 13 years 4 months, and the other received 12 years four months).

After explaining that it had “given serious consideration to the” idea and “considered many factors,” the court declined to dismiss the prior strike because it concluded that punishing defendant pursuant to the “Three Strikes” law would “be within the spirit of the law” The court explained that it was “required to consider both the rights of the defendant and those of society in determining” whether the strike should be stricken. The court found most salient the violent nature of the robberies (counts 1 to 4), the fact that defendant’s prior strike was the same type of offense (a bank robbery), and defendant’s longstanding criminal history since the age of 16 (featuring “at least 20 adjudications as a juvenile or convictions as an adult, which include numerous felonies”). The court rejected the notion that defendant was in a position to turn his life around: “Based on the totality of the factors and circumstances that I’ve referenced, this court does not believe that stability of a positive nature is in [defendant’s] future. He has a history of offending and reoffending, and his history strongly suggests that if given the opportunity he will continue to reoffend.” As to defendant comparing himself to his accomplices, the court noted that it had presided over the trial of Roderick Junior, and the evidence had suggested he was a lookout rather than one of the two individuals assaulting bank employees.

DISCUSSION

In deciding whether to dismiss a strike pursuant to *Romero*, courts “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.) “[A] court’s failure to dismiss or strike a prior conviction allegation is subject to review under the deferential abuse of discretion standard.” (*People v. Carmony* (2004) 33 Cal.4th 367, 374.)

“[T]he three strikes law not only establishes a sentencing norm, it carefully circumscribes the trial court’s power to depart from this norm and requires the court to explicitly justify its decision to do so. In doing so, the law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper. [¶] In light of this presumption, a trial court will only abuse its discretion in failing to strike a prior felony conviction in limited circumstances. For example, an abuse of discretion occurs where the trial court was not ‘aware of its discretion’ to dismiss [citation], or where the court considered impermissible factors in declining to dismiss [citation]. Moreover, ‘the sentencing norms [established by the Three Strikes law may, as a matter of law,] produce[] an “arbitrary, capricious or patently absurd” result’ under the specific facts of a particular case. [Citation.] [¶] But ‘[i]t is not enough to show that reasonable people might disagree about whether to strike one or more’ prior conviction allegations.” (*People v. Carmony, supra*, 33 Cal.4th at p. 378.)

Defendant claims the court failed to fairly consider several factors. First, defendant states that most of his criminal history (with the exception of the offenses in this case) consisted of nonviolent offenses. Second, defendant points to his emotional attachment to his family, as established by the fact that his wife and mother testified on his behalf at trial. Third, defendant noted his gainful employment as a truck driver prior to his arrest. Fourth, defendant cites his age (43 years old), suggesting it is unnecessary to incapacitate defendant well past the age at which recidivism would be likely. (See *People v. Bishop* (1997) 56 Cal.App.4th 1245, 1251.) Fifth, defendant reiterates the disparity between his sentence and the years in prison dispensed to his confederates. In sum, defendant claims the court overemphasized defendant’s criminal record and abused

its discretion by failing to fairly consider all of the relevant considerations. (*People v. Garcia* (1999) 20 Cal.4th 490, 501 [“[w]hile a defendant’s recidivist status is undeniably relevant, it is not singularly dispositive”].)

The court did not abuse its discretion. The court understood it had discretion to provide the requested relief and understood the factors it was required to consider. The court noted its consideration of defendant’s “character, background, history, [and] personal circumstances.” The court did not rely on improper factors. Instead, the court balanced all of the relevant evidence before it and reached a reasonable conclusion about the appropriateness of defendant’s sentence under the Three Strikes law. The fact that defendant’s accomplices received less punishment did not require the court to dismiss his prior strike. The court explained there was good reason for the lower sentence of one accomplice (Junior), and we note there is insufficient evidence in the record to determine the precise reason for the lower sentence of the other accomplice (Keys).

DISPOSITION

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

MOORE, ACTING P. J.

THOMPSON, J.