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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY THOMAS OROZCO,

Defendant and Appellant.

H037132

(Santa Clara County
Super.Ct.No. C1068965)

Defendant Anthony Thomas Orozco entered a plea of guilty to possession of a controlled substance for sale, a felony, and misdemeanor driving on a license suspended or revoked for driving under the influence. He also admitted allegations that he (1) had been convicted previously of two violent or serious felonies, or “strikes,” and (2) had been convicted previously of five felonies for which he served prison terms. He thereafter brought a motion to dismiss the prior strike allegations, in accordance with *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*), which was opposed by the People. The court denied the *Romero* motion, struck the five prior prison offense enhancements, and sentenced defendant to a term of 25 years to life in prison. After later recalling the sentence, the court reinstated it.

Defendant argues on appeal that the trial court erred in denying his *Romero* motion. He also makes a cursory assertion that the imposed sentence constituted cruel and unusual punishment in violation of the Eighth Amendment of the United States

Constitution. We conclude that the court did not abuse its discretion, decline to consider defendant's perfunctorily asserted constitutional claim, and affirm the judgment.

FACTS¹

On February 6, 2010, a San Jose Police officer observed defendant in the area of Alum Rock Avenue driving at a high rate of speed and with a broken tail light. After the officer made contact with defendant, he admitted that he was on active parole. Defendant was driving on a suspended license and the officer's search of the car revealed one plastic baggie containing approximately 28.7 grams of methamphetamine; two plastic baggies containing 1.2 grams of methamphetamine; two plastic baggies containing 2.0 grams of methamphetamine; \$177 in currency; and a cellular phone that had text messages concerning the subject of buying and selling narcotics.

THE PRIOR STRIKES

On November 22, 1992, defendant assaulted a 26-year-old woman, his girlfriend, while she was walking home with a male friend. Defendant accosted the woman and male, argued with them, and began hitting them. Defendant grabbed his girlfriend by the hair, pulled her upstairs to their apartment, and punched her in the face, knocking her to the floor. Defendant then kicked her in the face. The woman's face was badly bruised and swollen, and she was transported to the hospital. Defendant was convicted of infliction of corporal injury upon a cohabitant with personal infliction of great bodily injury (Pen. Code, § 273.5, subd. (a)),² a felony (hereafter, the 1992 strike).

On August 7, 1994, defendant and an accomplice robbed a man in the parking lot of a 7-Eleven convenience store. The victim reported that defendant and another person robbed him of his wallet and a 12-pack of beer. The police arrested defendant shortly after the incident. They observed that defendant was intoxicated. Defendant was

¹ Our summaries of the facts and strike priors are taken from the probation report.

² All further statutory references are to the Penal Code unless otherwise stated.

convicted of second degree robbery (§§ 211 – 212.5, subd. (c), a felony (hereafter, the 1994 strike).

PROCEDURAL BACKGROUND

Defendant was charged by information filed on July 15, 2010, with possession of a controlled substance (methamphetamine) for sale, a felony (Health & Saf. Code, § 11378; count 1), and driving while having a suspended or revoked license for driving under the influence, a misdemeanor (Veh. Code, § 14601.2, subd. (b); count 2). It was alleged in the information that defendant had been convicted previously (1) of two violent or serious felonies, i.e., strikes (§§ 667, subds. (b) – (i); 1170.12), namely, the 1992 strike (infliction of corporal injury upon a cohabitant with personal infliction of great bodily injury) and the 1994 strike (second degree burglary); and (2) of five offenses for which he had served prison terms, and after having served those terms, had not remained free of both prison custody and the commission of an offense resulting in a felony conviction for a period of five years (§ 667.5, subd. (b)).

On September 14, 2010, defendant entered a plea of guilty to both counts and admitted all of the allegations in the information. The plea was entered with the understanding that the maximum sentence defendant would receive would be 25 years to life consecutive to five years, and that defendant would be filing a *Romero* motion to strike the strike allegations. Before accepting the plea, the court apprised defendant fully of the rights he was giving up as a result of his guilty plea and concerning the consequences of that plea. Counsel stipulated that there was a factual basis for the plea.

Defendant thereafter made a motion to have the court exercise its discretion to strike both of the prior strike allegations, in accordance with *Romero, supra*, 13 Cal.4th 497, which was opposed by the People. After hearing argument on February 24, 2011, the court denied defendant's motion. It imposed a prison sentence of 25 years to life for the conviction of possession of a controlled substance for sale, and a concurrent 90-day sentence for the misdemeanor count 2 conviction, which was deemed served. The

court also exercised its discretion under section 1385 by striking the five prison prior allegations. After later recalling the sentence pursuant to section 1170, subdivision (d), on June 30, 2011, the court reinstated it as originally imposed. Defendant filed a timely notice of appeal on July 5, 2011.

DISCUSSION

I. *Appealability*

The relevant portion of the notice of appeal filed in July 2011 reads as follows: “NOTICE IS HEREBY GIVEN that the defendant appeals the judgment entered in the above-entitled action on or about June 30, 2011.” We reached the tentative conclusion that the notice of appeal was defective and that defendant’s appeal was thus subject to dismissal. Although the matter was not raised in respondent’s brief, because we have a duty to raise issues concerning our jurisdiction (*Olson v. Cory* (1983) 35 Cal.3d 390, 398), we issued an order directing defendant to show cause why the appeal should not be dismissed.

Appeals following guilty or no contest pleas are of a “more limited nature” than appeals following a judgment of conviction after trial. (*In re Chavez* (2003) 30 Cal.4th 643, 654.) Section 1237.5 precludes an appeal by a defendant from a judgment based upon a guilty or no contest plea, or upon a revocation of probation after an admission of the violation, except where (1) the defendant has filed a sworn statement “showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings,” and (2) the trial court signs a certificate of probable cause for the appeal. In addition to so-called “certificate” issues that may be the subject of an appeal from a guilty or no contest plea under section 1237.5, a defendant may obtain review of “postplea questions not challenging his plea’s validity and/or questions involving a search or seizure whose lawfulness was contested pursuant to section 1538.5.” (*People v. Mendez* (1999) 19 Cal.4th 1084, 1088.)

Rule 8.304(b) of the California Rules of Court³ provides that a defendant appealing from a judgment entered after a guilty or no contest plea or after admission of a probation violation must file in addition to the notice of appeal the sworn statement required under section 1237.5, and that, if defendant fails to file the statement, or if the court denies the request for a certificate of probable cause, the defendant’s appeal is deemed “ ‘[i]noperative.’ ” Rule 8.304(b)(4) identifies two exceptions to certificate issue appeals—noncertificate issue appeals—where “the notice of appeal *states* that the appeal is based on: [¶] (A) The denial of a motion to suppress evidence under Penal Code section 1538.5; or [¶] (B) Grounds that arose after entry of the plea and do not affect the plea’s validity.” (Italics added.)

Cases construing rule 8.304’s predecessor, former rule 31(d), have uniformly held that a criminal defendant who has pleaded guilty or no contest may appeal on noncertificate grounds only if he or she complies with the Rules of Court by specifically stating in the notice of appeal that review is sought of noncertificate issues. The failure to state that review is sought of noncertificate issues results in “the appeal [being] not ‘operative.’ ” (*People v. Jones* (1995) 10 Cal.4th 1102, 1108, disapproved of on another ground in *In re Chavez, supra*, 30 Cal.4th at p. 656; see also *People v. Mendez, supra*, 19 Cal.4th at pp. 1088, 1096, 1099; *People v. Lloyd* (1998) 17 Cal.4th 658, 664.) Both former rule 31(d) and rule 8.304(b)(4) contain the requirement that the defendant specifically identify in the notice of appeal that he or she is seeking review of noncertificate issues. An appeal purportedly based on either certificate or noncertificate issues that does not comply with the Rules of Court is subject to dismissal upon either the respondent’s or the court’s own motion. (*People v. Jones*, at p. 1108.)

³ All further rule references are to the California Rules of Court unless otherwise stated.

pleads guilty. [Citation.] Nor would a court act properly if ‘guided solely by a personal antipathy for the effect that the three strikes law would have on [a] defendant,’ while ignoring ‘defendant's background,’ ‘the nature of his present offenses,’ and other ‘individualized considerations.’ [Citation.]” (*Id.* at p. 531.)

The Supreme Court later explained further “the ‘concept’ of ‘furtherance of justice’ within the meaning of Penal Code section 1385[, subdivision] (a) [which *Romero* had recognized as being] ‘“amorphous.”’ [Citation.]” (*People v. Williams* (1998) 17 Cal.4th 148, 159 (*Williams*)). The high court noted that in deciding whether to dismiss a strike “‘in furtherance of justice’ pursuant to Penal Code 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.” (*Id.* at p. 161.) The sentence to be meted out to the defendant “is also a relevant consideration . . . in fact, it is the overarching consideration because the underlying purpose of striking prior conviction allegations is the avoidance of unjust sentences. [Citation.]” (*People v. Garcia* (1999) 20 Cal.4th 490, 500.) If the court strikes or dismisses one or more prior conviction allegations, its reasons for doing so must be stated in an order entered on the minutes. (*Ibid.*) Conversely, the trial court has no obligation to set forth its reasons for deciding not to strike or dismiss prior strikes. (*In re Large* (2007) 41 Cal.4th 538, 546, fn. 6.)

The granting of a *Romero* motion is “subject to review for abuse of discretion. This standard is deferential. [Citations.] But it is not empty. Although variously phrased in various decisions [citation], it asks in substance whether the ruling in question ‘falls outside the bounds of reason’ under the applicable law and the relevant facts. [Citations.]” (*Williams, supra*, 17 Cal.4th at p. 162; see also *People v. Garcia, supra*, 20

Cal.4th at p. 503.) And this abuse of discretion standard also applies to appellate review of the denial of *Romero* motions. (*People v. Carmony* (2004) 33 Cal.4th 367, 374-376 (*Carmony*); see also *id.* at p. 375: “ ‘Discretion is the power to make the decision, one way or the other.’ ”) It is the defendant’s burden as the party attacking the sentencing decision to show that it was arbitrary or irrational, and, absent such showing, there is a presumption that the court “ ‘ ‘acted to achieve the legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.’ ” [Citations.]” (*Id.* at p. 377.)

Placing in context the circumstances under which a court properly exercises its discretion in granting a *Romero* motion, as the Supreme Court has explained: “[T]he [T]hree [S]trikes 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 allegation in limited circumstances.” (*Carmony, supra*, 33 Cal.4th at p. 378.) Therefore, “[b]ecause 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.*)

B. *Defendant’s Romero Motion*

In his written *Romero* motion, defense counsel argued that the court should exercise its discretion to strike the two strike priors. He argued that, after considering defendant’s particular history and the fact that the two strike priors were not recent (i.e., 17 and 19 years old), he did “not fit the profile of someone that should be returning to

prison. It would be beneficial for [defendant] to be sentenced to a long[-]term substance abuse program . . .” At the hearing on the *Romero* motion, defense counsel stressed that a number of people had submitted letters in support of defendant; the strike priors occurred in 1992 and 1994; the current offense did not involve violence; there had been no history of violence since the early 1990s; defendant was 41 years old; and the current offense came about as a result of a drug relapse.

In opposing the motion, the People argued that “[t]here are no legitimate grounds for this [*Romero*] request.” The People detailed the nature and extent of defendant’s adult criminal history. Defendant had (with the current offense) eight felony convictions, along with numerous misdemeanor convictions. As explained in the People’s opposition: “The defendant’s adult criminal history begins with a misdemeanor conviction in February 1989 for being under the influence of a controlled substance. By September of 1989, he was arrested for, and ultimately convicted of, ten more misdemeanor offenses, including two for driving under the influence (‘DUI’). He was arrested on September 7, 1989, for burglary. He was convicted of two counts of felony [s]econd [d]egree [b]urglary on February 8, 1990. He was granted probation and ordered to serve four months in the county jail. During the next two years, the defendant was convicted of ten more misdemeanor offenses, including two for DUI and one for hit and run. On February 6, 1992, the defendant’s probation was revoked and he was sentenced to 16 months in prison. [¶] The defendant has been incarcerated or on parole continuously since February 6, 1992. He was first paroled on July 13, 1992. On November 13, 1992, the defendant was arrested for his first strike prior offense: punching and kicking his girlfriend in the head and face. He was sentenced to two years in prison. He was paroled on February 4, 1994. In April and June of 1994, he returned to prison for two 30-day ‘dry-out’ periods in a substance abuse treatment control unit pursuant to Health and Safety Code section 11561. On August 7, 1994, the defendant was arrested for his second strike prior offense: robbery. He was sentenced to prison for four years. He was

paroled on January 29, 1998. Less than two months later, he again returned to prison for a 60-day ‘dry-out’ period. [¶] On May 31, 1998, the defendant was arrested for possession of a controlled substance. He was charged and convicted of felony violations of Health and Safety Code sections 11378 and 11377. The defendant admitted only the robbery strike prior conviction. The cohabitant battery strike prior conviction was dismissed by the People. On March 29, 1999, he was sentenced to seven years in prison. He was paroled on October 20, 2004. [¶] On February 16, 2005, he was arrested for possessing over 100 grams of methamphetamine for sale. He was convicted of his second violation of Health and Safety Code sections 11378 on March 16, 2005. Only one prior strike conviction was alleged and admitted by the defendant. He was sentenced to five years in prison on April 14, 2005. He was paroled on July 18, 2009. He was arrested for the current offense on February 6, 2010. [¶] Since his first prison commitment in 1992, the longest period of time the defendant has been out of custody is six months.” (Fn. omitted.)

Based upon the nature of the current offense and the strike prior offenses, defendant’s criminal history, and his background, character, and prospects, the People argued that the *Romero* motion should be denied. Indeed, the People argued, granting the motion to strike the strike prior convictions would constitute an abuse of discretion.

After hearing argument, the court denied defendant’s *Romero* motion. As to the current offense, it noted that while the methamphetamine in defendant’s possession was “not a staggering amount,” the remaining evidence, including phone messages showing inquiries about drug sales, clearly showed that defendant possessed the methamphetamine for sale. After detailing the nature of the two strike priors and defendant’s criminal history, and after acknowledging defendant’s age, and support from his family and community, the court noted that it gave some weight to defendant’s being a validated Norteño gang member, but stated that it was “more concerned about the fact that the defendant as early as the passage of the strike laws has been staring in the mirror

understanding that he's walking around as somebody with a target on his back for a 25-to-life sentence.”

Upon defendant's application, the court recalled the prison sentence imposed immediately after denying the *Romero* motion. After receiving letter briefs and argument from counsel, the court reinstated the sentence as originally imposed, observing that defendant had been previously sentenced to prison terms five times for an aggregate period of over 19 years, “which is 84 percent of his adult life. He never successfully completed parole. And . . . he was on parole at [the] time of [his commission] of this particular possession for sale [offense]. He had been incarcerated or on parole continuously since 1992, which has had no deterrent effect.”

C. *Discussion Regarding Denial of Romero Motion*

Defendant argues that the court abused its discretion in denying his *Romero* motion, contending that under the circumstances of this case, the court was required to “dismiss at least one strike.” The factors upon which defendant bases this claim include (1) the current felony was neither a serious nor violent felony; (2) both of the strike offenses were “old” and their remoteness was a factor supporting the dismissal of at least one strike; (3) while defendant's criminal history “no doubt fails to suggest that [he] is a model citizen,” most of his criminal offenses were drug-related and none other than the two strikes were violent or serious felonies; (4) defendant at 41 is no longer a young man and studies show that criminal activity tends to decline as past offenders become older; and (5) the current offense of methamphetamine possession for sale is not a crime of such severity that it “should . . . trigger a prison term of at least 25 years.”

Defendant's contentions are without merit. As the court acknowledged, in considering the *Romero* motion, it was obliged to consider the three factors identified by the high court in *Williams*, namely, “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” (*Williams, supra*, 17 Cal.4th at p. 161.)

Concerning the first factor (current offense), the court noted that the evidence strongly supported the charge that defendant was in possession of methamphetamine for the purpose of selling it. Defendant argues that the fact that the current felony was neither violent nor serious militates in favor of striking one or both of the prior strike offenses. While the court may certainly consider the nature of the current offense in deciding whether to strike a prior strike offense, by itself, the fact that the current offense is not a violent or serious felony is insufficient. In *People v. Strong* (2001) 87 Cal.App.4th 328, the trial court granted the defendant's *Romero* motion, in part, based upon the fact that the current offense (the sale of a substance falsely represented to be cocaine) was " 'relatively non-threatening' " (*Id.* at p. 343.) The appellate court, which held that granting the *Romero* motion constituted an abuse of discretion, explained: "By its very terms, any felony triggers a longer sentence under the Three Strikes law as long as the defendant has sustained at least one strike. Since the express intent of the Three Strikes law is 'to ensure longer prison sentences' for any defendant who has a qualifying strike and subsequently commits 'a felony,' the nonviolent or nonthreatening nature of the felony cannot alone take the crime outside the spirit of the law. [Citation.] To conclude otherwise would rewrite the statute to only trigger a longer prison sentence for those defendants who commit a violent or threatening felony after having committed at least one strike. That is not the law's letter or spirit." (*Id.* at p. 344, fns. omitted; see also *People v. Poslof* (2005) 126 Cal.App.4th 92, 108 [court's denial of *Romero* motion was not an abuse discretion, even though current crime, failing to register as a sex offender, was nonviolent]; *People v. Gaston* (1999) 74 Cal.App.4th 310, 321 [even though current offense (unlawful driving or taking of vehicle) was "not as serious as many felonies" and did not constitute a "serious felony" under Three Strikes law, it was "far from trivial"].)

The court below, in addressing the second *Williams* factor, noted that the 1992 strike involved a battery inflicted upon defendant's girlfriend, namely, punching and

kicking her in the face and head. The 1994 strike was committed while defendant was on parole from the first offense and the court noted that it “had significant impact on the victims.” Although defendant urges that the remoteness of the strike offenses suggests that the court should have ordered them stricken, we disagree. The nearness or remoteness in time of the strike prior offenses is one factor to consider in determining whether a court should exercise its discretion to strike them under *Romero*; it must be considered in conjunction with other factors, such as the defendant’s history of criminality. As explained by the Second District Court of Appeal, “In determining whether a prior conviction is remote, the trial court should not simply consult the Gregorian calendar with blinders on. To be sure, a prior conviction may be stricken if it is remote in time. In criminal law parlance, this is sometimes referred to as ‘washing out.’ [Citations.] The phrase is apt because it carries the connotation of a crime-free cleansing period of rehabilitation after a defendant has had the opportunity to reflect upon the error of his or her ways. Where, as here, the defendant has led a continuous life of crime after the prior, there has been no ‘washing out’ and there is simply nothing mitigating about a 20-year-old prior. Phrased otherwise, the defendant has not [led] a ‘legally blameless life’ since the 1976 prior. [Citations.] Far from being ‘washed out,’ this prior was ‘dyed in.’ ” (*People v. Humphrey* (1997) 58 Cal.App.4th 809, 813.)

In addressing the third factor enunciated in *Williams*—“the particulars of [defendant’s] background, character, and prospects” (*Williams, supra*, 17 Cal.4th at p. 161)—the court emphasized defendant’s extensive criminal history both at the time it heard the *Romero* motion and when it reconsidered its sentencing order. It noted that defendant had been faced with a potential 25-years-to-life sentence for many years, and that he had “shown an inability to conform [his] behavior after clear and unmistakable warnings that he ran the risk of being treated as a three strike defendant” The court also noted that defendant had in the past been given the benefit of the doubt in not being considered as a Three-Strikes offender at sentencing, but had not taken advantage of this

leniency and had instead continued to commit crimes. (See *People v. Philpot* (2004) 122 Cal.App.4th 893, 906-907 [court properly considered the defendant's history of continuously committing crimes for 20 years, his underlying drug addiction, and the prior and current offense as indicative of his poor future prospects and that, as "a flagrant recidivist," he was not outside the spirit of the Three Strikes law].)

Defendant emphasizes that he was 41 years old (at the time of the *Romero* motion) and that this factor should have been given greater consideration. The court in fact considered defendant's age as a factor in deciding whether to grant the motion. But the fact that defendant was no longer young was hardly a sufficient reason for striking one or both strike priors. "[M]iddle age, considered alone, does not remove a defendant from the spirit of the Three Strikes law. Otherwise, those criminals with the longest criminal records over the longest period of time would have a built-in argument that the very factor that takes them within the spirit of the Three Strikes law—a lengthy criminal career—has the inevitable consequence—middle age—that takes them outside the law's spirit." (*People v. Strong, supra*, 87 Cal.App.4th at p. 345.)

Lastly, we address briefly defendant's claim that in light of prison overcrowding and state budget woes, "there may be an increasing public sense that the Three Strikes law is overly ambitious and counter-productive" (Footnote omitted.) Irrespective of this policy debate, prison overcrowding and budgetary considerations are "factors extrinsic to the [statutory] scheme" (*Williams, supra*, 17 Cal.4th at p. 161)—similar to other extrinsic factors such as the desire to ease court congestion or personal antipathy to the Three Strikes law—that must be given no weight in determining whether a defendant in a given case should have one or more strikes dismissed.

Defendant's criminal career has spanned a 22-year period in which, as the court observed, he had been previously sentenced to prison terms five times for an aggregate period of over 19 years. And as the court noted further, defendant "had been incarcerated or on parole continuously since 1992, which has had no deterrent effect." He therefore,

like the defendant in *Gaston*, “is the kind of revolving-door career criminal for whom the Three Strikes law was devised.” (*People v. Gaston, supra*, 74 Cal.App.4th at p. 320.) “[E]xtraordinary must the circumstance be 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.” (*People v. Strong, supra*, 87 Cal.App.4th at p. 338.) The circumstances here are not extraordinary and the court, after giving due consideration to defendant’s prospects, the specifics of the current offenses, the nature of the prior strike offenses, and the evidence of defendant’s extensive criminal record, properly concluded that defendant did not fall outside of the letter and spirit of the Three Strikes sentencing scheme. Therefore, we find that the court did not abuse its discretion in denying defendant’s *Romero* motion.

III. *Cruel and Unusual Punishment*

Defendant argues in passing that the sentence imposed “of at least 25 years is sufficiently disproportionate to the crime he committed so that it violates the Eight Amendment to the United States Constitution. [Citation.]” We need not consider this one-sentence claim. (*People v. Jones* (1998) 17 Cal.4th 279, 304 [due process claim is presented “perfunctorily and without supporting argument, and we reject it in similar fashion”]; *People v. Mayfield* (1993) 5 Cal.4th 142, 196 [same].)⁴

⁴ Because defendant’s Eighth Amendment argument is undeveloped, we need not address whether it is even cognizable on appeal, given that defendant did not obtain a certificate of probable cause and a sentence of at least 25 years to life was contemplated as the possible maximum sentence when defendant pleaded guilty. (See *People v. Rushing* (2008) 168 Cal.App.4th 354, 361-362 [dismissing appeal without certificate of probable cause, where defendant claimed sentence constituted cruel and unusual punishment, because it constituted challenge to maximum allowable term agreed to after plea bargain].)

DISPOSITION

The judgment is affirmed.

Duffy, J.*

WE CONCUR:

Banattre-Manoukian, Acting P.J.

Mihara, J.

* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.