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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

| | |
|---|---|
| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>TERRANCE TYRON JEFFERSON, SR.,<br><br>Defendant and Appellant. | E070627<br><br>(Super.Ct.No. RIF1704206)<br><br>OPINION |

APPEAL from the Superior Court of Riverside County. Samuel Diaz, Jr., Judge. Affirmed.

Susan S. Bauguess, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel and Tami Falkenstein Hennick, Deputy Attorneys General, for Plaintiff and Respondent.

## I.

## INTRODUCTION

Defendant and appellant, Terrance Tyron Jefferson, was convicted of one count of felony second-degree burglary of a vehicle. (Pen. Code, § 459.)[1] In a bifurcated proceeding prior to trial, defendant admitted to having suffered one prior strike conviction (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and two prior prison terms (§ 667.5, subd. (b)). Defendant was sentenced to the low term of 16 months, doubled to 32 months for the second-degree burglary, plus one year for each of the two prison priors for a total of four years eight months in state prison with 340 days' credit for time served. On appeal, defendant claims the trial court erred in (1) refusing to strike under section 1385 his 2004 strike conviction for first-degree burglary conviction, and (2) declining to reduce his current conviction from a felony to a misdemeanor under section 17, subdivision (b)(5). We find no abuse of discretion and affirm the judgment.

## II.

## FACTUAL AND PROCEDURAL BACKGROUND

Mario Mejia, a Time Warner technician, parked his work van in front of his home on the night of December 2, 2014. The next morning, Mejia found his van with its side door open, a window broken, glass on the driver's seat, and blood on the driver's seat and center console. Mejia noticed that several items, including his keys, a sweater, and other personal effects, were missing. Mejia also noticed that the van's GPS unit had been

[1] Unless otherwise noted, all statutory references are to the Penal Code.

damaged. The blood found in the van was identified as defendant's blood. Defendant was subsequently arrested. At the time of his arrest, defendant was on parole for a separate offense, and in custody for another burglary offense.

On April 25, 2018, an amended information was filed charging defendant with one count of felony burglary. (§ 459.) Defendant also was charged with three prison priors for: (1) unlawful sex with a minor (§ 261.5); (2) receiving stolen property (§ 496, subd. (a)); and (3) second-degree burglary (§ 459).

On April 26, 2018, a jury found defendant guilty of felony second-degree burglary. On May 14, 2018, defendant admitted to the two prior convictions for unlawful sex with a minor (§ 261.5), and for receiving stolen property (§ 496, subd. (a)). The trial court then reduced defendant's prior conviction for second-degree burglary (§ 459) from a felony to a misdemeanor.

Defendant's sentencing hearing was held on May 24, 2018. At the beginning of the hearing, defense counsel made an oral motion under section 17, subdivision (b)(5), to reduce his current conviction from a felony to a misdemeanor. The trial court denied the motion, finding that defendant's conduct was felonious "under the totality of the circumstances."

The trial court then addressed defendant's *Romero*[2] motion under section 1385. The court informed the parties it had "read and considered" defendant's probation report, as well as defendant's *Romero* motion and the People's sentencing recommendation. The

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

trial court noted defendant's "extensive criminal history" laid out in the probation officer's report, and observed that defendant "ha[d] not been law-abiding," and had been "in custody on other matters" since committing his current offense. The trial court therefore denied defendant's *Romero* motion to strike his prior conviction.

The trial court imposed the low term of two years eight months for defendant's burglary conviction. The court then imposed an additional one year for two of the three prior prison terms for a total sentence of four years eight months. Defendant timely appealed.

III.

DISCUSSION

A. *Denial of Defendant's Motion to Strike Prior Conviction*

Defendant contends the trial court erred by denying his *Romero* motion to strike his 2004 strike conviction for first-degree burglary. We disagree.

1. *Legal Principles and Standard of Review*

"As the Supreme Court explained in *Romero*, section 1385 permits a trial court to strike an allegation of a prior felony conviction in cases brought under the "Three Strikes" law, in the interests of justice." (*People v. Thimmes* (2006) 138 Cal.App.4th 1207, 1213, citing *Romero*, *supra*, 13 Cal.4th at pp. 529-530.) "[I]n ruling whether to strike or vacate a prior serious and/or violent felony conviction allegation . . . 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." (*People v. Williams* (1998) 17 Cal.4th 148, 161.)

The purpose of the Three Strikes law is "to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of one or more serious or violent felony offenses." (§ 667, subd. (b).) The Three Strikes law "establishes a sentencing requirement to be applied in every case where the defendant has at least one qualifying strike," unless the trial court determines the defendant falls outside the scheme's spirit. (*People v. Strong* (2001) 87 Cal.App.4th 328, 337-338.) "[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." (*Id*. at p. 338.) Thus, the Three Strikes law "not only establishes a sentencing norm, it carefully circumscribes the trial court's power to depart from this norm." (*People v. Carmony* (2004) 33 Cal.4th 367, 378.)

"The trial court is not required to state reasons for declining to exercise its discretion under section 1385." (*People v. Gillispie* (1997) 60 Cal.App.4th 429, 433.) The trial court "is presumed to have considered all of the relevant factors in the absence of an affirmative record to the contrary." (*People v. Myers* (1999) 69 Cal.App.4th 305, 310.)

A trial court's decision not to strike a prior conviction allegation is reviewed under the abuse of discretion standard. (*People v. Carmony*, *supra*, 33 Cal.4th at p. 371.) "This standard is deferential . . . it asks in substance whether the ruling in question 'falls outside the bounds of reason' under the applicable law and the relevant facts." (*People v. Williams*, *supra*, 17 Cal.4th at p. 162.) "Under that standard an appellant who seeks reversal must demonstrate that the trial court's decision was irrational or arbitrary. It is not enough to show that reasonable people might disagree about whether to strike one or more of his 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, even if we might have ruled differently in the first instance." (*People v. Myers*, *supra*, 69 Cal.App.4th at pp. 309-310.)

2. *Analysis*

Contrary to defendant's assertion, nothing in the record suggests defendant falls outside the spirit of the Three Strikes law. When denying the *Romero* motion, the trial court explained that it had reviewed the probation report, which summarized the nature of defendant's present offenses and his extensive criminal history.

As a juvenile, defendant was convicted of one count of burglary (§ 459), one count of theft by false pretenses (§ 484), two counts of possessing marijuana for sale (Health & Saf. Code, § 11357), and one count of violating a court order. (Welf. & Inst. Code, §§ 602, 777.)

As an adult, defendant has 21 convictions, nine of which are felonies. Between 2003 and 2017, defendant was convicted for the following offenses: two counts of possession of cannabis for sale (Health & Saf. Code, §§ 11357, 11359); one count of resisting arrest (Pen. Code, § 148, subd. (a)(1)); four counts of burglary (Pen. Code, § 459); one count of shoplifting (Pen. Code, § 459.5); five counts of possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)); one count of possession of drug paraphernalia (Health and Saf. Code, § 11364); two counts of receiving stolen property (Pen. Code, § 496, subd. (a)); one count of unlawful sexual intercourse with a minor (Pen. Code, § 261.5); one count of purchasing a stolen vehicle (Pen. Code, § 496d, subd. (a)); one count of petty theft (Pen. Code, § 488); one count of being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a)); and one count of taking or driving a vehicle with a prior conviction for the same offense (Pen. Code, § 666.5, subd. (a)). Eight of these convictions occurred after defendant committed his current offense.

The report further outlined defendant's unsuccessful efforts on probation and parole, and noted that, at the time of his current offense, defendant was on parole for a prior offense and in custody for another burglary offense. The trial court specifically acknowledged defendant's "extensive criminal history," including that he had been "in custody on other matters" since committing the current offense.

Given the trial court's statements that it had reviewed the probation report and defendant's *Romero* motion, we cannot conclude that the trial court erred in denying

defendant's motion or that it failed to consider the *Williams* factors in denying the motion. Indeed, the record affirmatively shows the trial court considered the nature of the current offense, defendant's prior serious and/or violent felony convictions, his criminal history, and his "background, character, and prospects," all of which was outlined in detail in the probation officer's report. (*People v. Williams, supra,* 17 Cal.4th at p. 161.)

Defendant nonetheless contends the trial court abused its discretion in refusing to strike his prior conviction because that conviction was remote, none of his offenses were violent, and the majority of his convictions were misdemeanors. Courts have rejected similar arguments where the defendant did not live a crime-free life between his or her strike prior and current crimes. (E.g., *People v. Gaston* (1999) 74 Cal.App.4th 310, 321 [holding trial court abused its discretion in striking 17-year-old prior where the defendant's "continuous crime spree . . . substantially spanned his entire adult life"]; *People v. Barrera* (1999) 70 Cal.App.4th 541, 554-555 [holding trial court did not abuse its discretion by refusing to dismiss 14-year-old strike justified where the defendant's criminal activity "'continued unabated'" upon his release from prison].) A remote prior may be stricken if the record establishes "a crime-free cleansing period of rehabilitation after a defendant has had the opportunity to reflect upon the error of his or her ways." (*People v. Humphrey* (1997) 58 Cal.App.4th 809, 813.)

That is not the case here. As the probation officer put it, defendant "has dedicated his life to crime since the young age of 16." His criminal record since 2001 shows he 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.) On this record, the trial court could rationally conclude defendant was "a career criminal" with a "long and continuous criminal record" who should not "be deemed to fall outside the spirt of" the Three Strikes law. (*People v. Strong*, *supra*, 87 Cal.App.4th at p. 338.) We therefore cannot find an abuse of discretion in the denial of defendant's *Romero* motion.

B. *Failure to Reduce Offense to a Misdemeanor*

Defendant contends the trial court abused its discretion by not reducing his felony burglary conviction from to a misdemeanor under section 17, subdivision (b)(5). We reject this contention as well.

"[S]econd degree burglary is a 'wobbler,' and may be punished as either a misdemeanor or a felony." (*People v. Mooney* (2011) 194 Cal.App.4th 850, 856) A trial court's reduction of a wobbler offense to a misdemeanor under subdivision (b) of section 17 is an act of leniency to which a convicted defendant is not entitled as a matter of right. (*People v. Tran* (2015) 242 Cal.App.4th 877, 892.) Because a court has broad discretion when deciding to reduce a wobbler offense, the court's decision will not be disturbed on appeal unless it is clearly shown to be irrational or arbitrary. (*Id*. at p. 887.) "'Absent such a showing, we presume the court acted to achieve legitimate sentencing objectives.'" (*Ibid*.) A court exercises its discretion to impose misdemeanor punishment for a wobbler when rehabilitation does not require or would not be served by incarceration. (*People v. Park* (2013) 56 Cal.4th 782, 790.)

Here, the record establishes the trial court acted within its discretion in denying defendant's motion to reduce his felony conviction to a misdemeanor. The probation officer considered defendant's current offense to be "calculated and planned" given that "it was not [defendant's] first or second burglary" and he seemingly waited until nighttime "to burglarize the van and go undetected." The probation officer also noted defendant's extensive criminal history dating back to 2003, including four burglaries and eight offenses he committed *after* his current offense. The report also explained defendant was on parole and in custody at the time of his arrest for his current offense. According to the probation officer, defendant had "been given several opportunities to succeed through probation, parole, and mandatory supervision," but had "failed to use" them.

The probation officer therefore reported five aggravating factors: (1) the manner in which defendant committed the burglary indicated planning, sophistication, or professionalism; (2) the burglary involved an attempted or actual taking or damage of great monetary value; (3) defendant's numerous convictions; (4) defendant's prior prison terms; and (5) defendant's unsatisfactory performance on probation and parole. The probation officer did not find any mitigating factors. In light of defendant's apparent "unwillingness to change and [his] continuous threat to the community," the probation officer recommended defendant be sentenced to prison instead of probation.

Given these findings and recommendations, which the trial court considered, we find nothing irrational or arbitrary about the court's decision to deny defendant's motion

under section 17, subdivision (b)(5). We therefore conclude the trial court did not abuse its discretion in not reducing defendant's felony second-degree burglary conviction to a misdemeanor.

IV.

DISPOSITION

The judgment is affirmed.

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CODRINGTON
J.

We concur:

McKINSTER
Acting P. J.

SLOUGH
J.