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

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

RONNIE JAKE,

Defendant and Appellant.

E032592

(Super.Ct.No. FSB032733)

**OPINION**

APPEAL from the Superior Court of San Bernardino County. Roberta McPeters, Judge. Affirmed.

Nancy Olsen, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Gil P. Gonzalez, Supervising Deputy Attorney General, and Stacy A. Tyler, Deputy Attorney General, for Plaintiff and Respondent.

Following a bifurcated trial, a jury found defendant guilty of second degree robbery. (Pen. Code, § 211.)<sup>1</sup> The trial court thereafter found true that defendant had suffered three prior strike convictions (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)); three prior serious felony convictions (§ 667, subd. (a)(1)); one prior violent felony prison term (§ 667.5, subd. (a)); and three prior felony prison terms (§ 667.5, subd. (b)). As a result, defendant was sentenced to a total term of 46 years to life in state prison: 25 years to life on the robbery conviction pursuant to the three strikes law; three years (one year each) for the three prior felony prison terms (§ 667.5, subd. (b)); 15 years (five years each) for the three prior serious felony convictions (§ 667, subd. (a)(1)); and three years for the prior violent felony prison term (§ 667.5, subd. (a)). On appeal, defendant contends (1) the case must either be remanded for resentencing or his sentence must be reduced by a total of 13 years for various sentencing errors; and (2) the trial court abused its discretion in denying his motion to strike his prior strike convictions. We reject these contentions and affirm the judgment.

## I

### FACTUAL BACKGROUND

On November 27, 2001, defendant approached the victim and stated that he liked the victim's watch and that he was going to take the watch. After the victim objected, defendant began swinging at the victim, and the victim fought back. During the fight, two other men jumped on the victim and wrestled him to the ground. Defendant

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<sup>1</sup> All future statutory references are to the Penal Code unless otherwise stated.

eventually took the watch. The victim called the police, and the police caught defendant within half an hour. The watch was in defendant's shoe.

## II

### DISCUSSION

#### *A. Alleged Sentencing Errors*

The amended information alleged that defendant had suffered five prior convictions: (1) first degree burglary (§ 459) (case No. A567064) in 1985; (2) robbery (§ 211) (case No. A570498) in 1986; (3) possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)) (case No. A570517) in 1986; (4) soliciting a minor to sell narcotics (Health & Saf. Code, § 11353) (case No. A576533) in 1988; and (5) grand theft (§ 487, subd. (c)) (case No. FSB12455) in 1996. Based on those five prior convictions, the amended information also alleged that defendant had suffered three prior strike convictions (robbery, burglary, and solicitation) (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)); three prior serious felony convictions (robbery, burglary, and solicitation) (§ 667, subd. (a)(1)); one prior violent felony prison term (§ 667.5, subd. (a)) based on the robbery conviction; and three prior felony prison terms (§ 667.5, subd. (b)) based on the possession, solicitation, and grand theft convictions. Essentially, the amended information alleged that defendant had suffered five prior convictions; three prior strike convictions; and seven additional special enhancements stemming from the five prior convictions.

At the bifurcated court trial on the priors, the trial court found each and every alleged prior conviction and related enhancement to be true. The court referred to four of the prior convictions listed in the information, case Nos. A570498, A570517, A576533, and FSB12455, by their number, and referred to the remaining prior, case No. 1567064, by the particular crime, burglary. The court and the prosecutor also referred to the specific Penal Code sections relating to the seven special enhancements: sections 667, subdivision (a)(1); 667.5, subdivision (a); and 667.5, subdivision (b). Nonetheless, because there were several priors and numerous enhancements, the prosecutor asked the court to restate and clarify its true findings on the record, which it did. The minute order of this proceeding individually lists all seven enhancement allegations, apart from the strikes, at the top of the page, under the heading “CHARGES[.]” First, it lists the three allegations under section 667.5, subdivision (b), then the three allegations under section 667, subdivision (a)(1), and then the one allegation under section 667.5, subdivision (a). However, in recording the court’s true findings on the seven enhancement allegations, the minute order refers to them as “prior(s)” one through seven.

At the sentencing hearing, before the trial court sentenced defendant, it denied defendant’s motion to strike his prior strike convictions. In the People’s opposition to defendant’s motion to strike, the prosecutor restated the court’s true findings of three prior serious felony convictions under section 667, subdivision (a)(1), three prior felony prison terms under section 667.5, subdivision (b), and one prior violent felony prison

term under section 667.5, subdivision (a).<sup>2</sup> The prosecutor also noted that the sentence calculation for these true findings, plus that for the current robbery conviction (which was enhanced pursuant to the three strikes law), was 46 years to life in state prison.

The trial court ultimately sentenced defendant to 46 years to life in state prison. The court specifically stated: “On Count 1, second degree robbery, in violation of Penal Code Section 211, pursuant to Penal Code Section 667 . . . [¶] . . . [a]nd Penal Code [sic] Section 1170.12[, subdivision] (c)(2)(a). [¶] . . . [25] years to life. [¶] Consecutive to the above, with the enhancement of a serious felony conviction in case number *A570498*, pursuant to [section] 667[, subdivision] (a)(1), the allegation was found true, five years. [¶] Also consecutive to the above in case *A570498*, pursuant to [section] 667[, subdivision] (a)(1), the allegation was true, five years. [¶] And consecutive to the above, with the enhancement of a prior prison term in FSB 12455, pursuant to [section] 667.5[, subdivision] (b), one year. [¶] Consecutive to the above with the enhancement of a prior prison term in case number *A576533*, pursuant to [section] 667.5[, subdivision] (b) of the People [sic] Code, one year. [¶] Consecutive to the above with the enhancement of a prior prison term in case number *A570517*, pursuant to [section] 667.5[, subdivision] (b) of the Penal Code, one year. [¶] And for the prior conviction in case number *A565567*, pursuant to [section] 667[, subdivision] (a)(1) of the Penal Code, five years. [¶] And further prior conviction pursuant to [section] 667. -- or [section]

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<sup>2</sup> The prosecutor also pointed out that the probation report neglected to list one of the prior serious felonies and the prior violent felony prison term.

667[, subdivision] (a), three years. For a total committed to state prison of [46] years to life with credit for time served . . . .” (Italics added.)

The minute order of that proceeding again lists the seven enhancements, apart from the strikes, at the top of the page under the heading “CHARGES[.]” And again, it lists the three section 667.5, subdivision (b) enhancements first, then the three section 667, subdivision (a)(1) enhancements, and lastly the one section 667.5, subdivision (a) enhancement. The minute order further again refers to the seven enhancements as “prior[s]” one through seven.

Defendant contends that (1) the trial court improperly imposed two identical five-year sentences under section 667, subdivision (a)(1) for the same offense; (2) the trial court incorrectly imposed one five-year sentence under section 667, subdivision (a)(1) for a prior that was not alleged in the information and which was not proven at the court trial on the priors; and (3) it is impossible to determine from the record which Penal Code section and which prior led to the three-year sentence. He therefore claims this court must either remand the matter for resentencing or his sentence must be reduced by a total of 13 years.

“When we view the whole record in the light most favorable to the *judgment* (see, e.g., *People v. Memro* (1985) 38 Cal.3d 658, 695), as opposed to certain of the trial court’s contemporaneous *remarks*” (*People v. Bravot* (1986) 183 Cal.App.3d 93, 95), we conclude defendant’s contentions are without merit. Since the special allegations in this case were complicated and defendant had numerous prior convictions, including the sale

of marijuana conviction (case No. A565567), which was mentioned in the People's opposition to defendant's motion to strike his prior convictions, it is not surprising that, in pronouncing the sentence, the trial court confused case numbers and a code section. Essentially, the court simply misspoke when it cited the wrong case numbers and a Penal Code section at the sentencing hearing.

However, as the People point out, no such confusion lies in the rest of the record. The court found all of the prior convictions and special allegations as alleged in the amended information true and sentenced defendant accordingly. The amended information alleged five priors, three strikes, and seven special enhancements. The seven enhancements were three prior prison terms (§ 667.5, subd. (b)) in case Nos. A570517, A576533, and FSB12455, which carried a term of one year each; three prior serious felony convictions (§ 667, subd. (a)(1)) in case Nos. A567064, A570498, and A576533, which carried a term of five years each; and one prior violent felony prison term (§ 667.5, subd. (a)) in case No. A570498, which carried a term of three years. At the bifurcated trial on the priors, the court found every allegation in the information true. In doing so, the court referred to each of the five priors in the information by case number or crime, and both the court and the prosecutor referred to each of the Penal Code sections cited in the amended information. The minute order of the trial court reflects seven true findings, apart from the strikes, and the same Penal Code sections cited in the amended information. A sentence, including all of the allegations in the amended information, would be 46 years to life in state prison. (See §§ 667, subds. (a)(1), (e), 667.5, subds. (a),

(b), 1170.12, subd. (c)(2)(A).) After declining to strike any of defendant's prior strike convictions, the trial court sentenced defendant to a total term of 46 years to life in state prison. Both the sentencing minute order and the abstract of judgment indicate the same number of enhancements and the same Penal Code sections as the amended information.

Accordingly, because the basis for the trial court's sentence is discernible from the record, and the sentence calculation is accurate, there is no need to remand the matter for resentencing.

*B. Motion to Strike Prior Convictions*

Defendant next claims the trial court abused its discretion in declining to strike one or more of his prior strike convictions pursuant to section 1385.<sup>3</sup> (See *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).) We disagree.

Rulings on *Romero* motions are reviewed for abuse of discretion. (*People v. Myers* (1999) 69 Cal.App.4th 305, 309.) Discretion is abused where the trial court's decision is "irrational or arbitrary." (*Id.* at pp. 309-310.) Discretion is also abused when the trial court's decision to strike or not to strike a prior is based on improper reasons

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<sup>3</sup> Defendant also discusses, at length, the trial court's failure to consider mitigating factors under California Rules of Court, rule 4.423. However, as the People point out, rule 4.423 is part of the determinate sentencing law, which applies only to convictions involving a determinate sentence. (Cal. Rules of Court, rule 4.403.) Defendant was not subject to a determinate sentence; rather, he was subject to an indeterminate term of 25 years to life for his current conviction under the three strikes law. (§ 667, subd. (e).) And the remaining 21 years were comprised of enhancement terms fixed by statute, which do not provide for upward or downward departure. (§§ 667, subd. (a)(1), 667.5, subs. (a), (b).) Accordingly, rule 4.423 does not apply here, and any discussion about it is futile.



(*Romero, supra*, 13 Cal.4th at p. 531; *People v. Benevides* (1998) 64 Cal.App.4th 728, 735, fn. 7) or the decision is not in conformity with the “spirit” of the law (*People v. Williams* (1998) 17 Cal.4th 148, 161 (*Williams*); *Myers*, at p. 310).

“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. [Citation.]” (*People v. Myers, supra*, 69 Cal.App.4th at p. 310.) Once the trial court has exercised its discretion and does not strike a prior conviction, this court’s role on appeal is very limited. Thus, it would be a rare case in which the trial court could abuse its discretion in declining to strike a prior conviction of a recidivist offender.

The touchstone of the analysis must be “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.” (*Williams, supra*, 17 Cal.4th at p. 161; see also *People v. Garcia* (1999) 20 Cal.4th 490, 498- 499.)

Defendant here filed his *Romero* motion on September 16, 2002, and the People filed their opposition thereafter. The motions included relevant law regarding the factors

the trial court must consider in dismissing a strike, the circumstances of the present and prior convictions, and the circumstances relevant to defendant. On October 4, 2002, at the sentencing hearing, the trial court, after noting that it had read and considered the motions, declined to strike any of defendant's prior strike convictions.

Defendant asserts the nature of the current offense (the value of the watch was minimal), his physical and mental characteristics (he is illiterate and homeless, he has an undiagnosed mental disorder, and he has a substance abuse problem), and the age and nonviolence of the priors were such that the trial court should have stricken one or more of his prior strikes. We reject this contention.

As noted *ante*, *Williams* requires consideration of “the nature and circumstances of [the defendant's] 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), and there is no indication from the record here that the trial court failed to perform this task. Defendant has manifested a persistent inability to conform his conduct to the requirements of the law. Defendant's past criminal history is extensive and serious. He began his life of crime in 1984, when he was placed on probation on August 2, 1984, after committing the offense of sale/transportation of marijuana (Health & Saf. Code, § 11360, subd. (a)). About three months later he violated probation by committing first degree burglary. His probation was then revoked, and reinstated, and he was ordered to serve 180 days in county jail. Thereafter, on February 1, 1986, he committed robbery (§ 211), and on April 4, 1986, he committed possession of a controlled substance (Health

& Saf. Code, § 11350, subd. (a)). He was then sent to state prison for three years. On September 22, 1987, he was paroled from prison; but then, on November 4, 1987, he violated parole. Thereafter, in November 1988, he was convicted of soliciting a minor to sell narcotics (Health & Saf. Code, § 11353) and sent to prison for six years. On January 11, 1992, he was paroled from prison; however, on July 13, 1992; March 2, 1994; and January 17, 1996, he violated parole. Thereafter, on July 18, 1996, he was convicted of grand theft (§ 487) and was placed on 36 months probation and given 90 days in county jail. Less than four months later, he was charged with robbery (§ 211) but convicted of grand theft and given 16 months of prison time. Thereafter, he violated parole seven times (on May 13, 1998; April 7, 1999; June 24, 1999; January 31, 2000; September 22, 2000; May 17, 2001; and June 20, 2001). Subsequently, on November 27, 2001, he committed the instant offense of robbery while he was on parole by attacking the victim for the victim's watch. It is clear from the record that prior rehabilitative efforts have been unsuccessful for defendant. Indeed, defendant's prospects for the future look no better than the past, in light of defendant's record of prior offense and reoffense and lack of marketable job skills.

There is no indication from the record here that the trial court failed to consider the factors as outlined in *Williams* or that it abused its discretion in determining that, as a flagrant recidivist, defendant was not outside the spirit of the three strikes law. (*Williams, supra*, 17 Cal.4th at p. 161.) Thus, given defendant's continuous criminal history, his parole and probation violations, the seriousness of the present and past

offenses, and defendant's seemingly dim prospects for rehabilitation and lack of meaningful crime-free periods, we cannot say that the trial court abused its discretion when it declined to strike any of defendant's prior strikes.

III

DISPOSITION

The judgment is affirmed.

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RICHLI

J.

We concur:

HOLLENHORST

Acting P.J.

McKINSTER

J.