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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL ANTHONY CAMPBELL,

Defendant and Appellant.

A126757

(Alameda County
Super. Ct. No. 158674)

A jury convicted appellant Michael Anthony Campbell of second degree murder and possession of a firearm by an ex-felon and found a strike allegation to be true. (Pen. Code,¹ §§ 187, subd. (a), 12021, subd. (a)(1).) The trial court denied his motion to set aside the strike. (§ 1385.) Doubling his term for murder on the basis of this strike, Campbell was sentenced to a total indeterminate term of 40 years to life in state prison. (See §§ 667, subds. (d)(3), (e)(1), 1170.12, subd. (c)(1).) He appeals, contending that the trial judge abused its discretion by denying the motion to strike. We affirm the judgment.

I. FACTS

In April 2007, 18-year-old Michael Anthony Campbell shot Derial Morris in the head, killing him. In August 2009, a jury convicted Campbell of second degree murder and possession of a firearm by an ex-felon based on this incident. (§§ 187, subd. (a),

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

12021, subd. (a)(1).)² It also found true allegations that Campbell personally used a firearm and personally discharged a firearm in the commission of the murder. (§§ 12022, subd. (a), 12022.5, subd. (a), 12022.53, subd. (b).) A strike allegation—based on a juvenile adjudication of second degree robbery committed in June 2005 when he was 16 years old—was also found true. (§§ 667, subds. (a)(1), (d)(3), 667.5, subd. (c)(9), 1192.7, subd. (c)(19).)

Before sentencing, Campbell unsuccessfully moved to set aside this strike. (§ 1385.) The trial court considered Campbell’s juvenile and criminal history when denying the motion to strike. Campbell’s brushes with the law began in March 2003, when the 14-year-old was arrested for driving a stolen car. He was made a ward of the juvenile court on the basis of its finding that he had committed a misdemeanor unlawful driving or taking of a vehicle. (Veh. Code, § 10851.) He tested positive for use of marijuana and failed to comply with other juvenile court requirements. Soon after he turned 15, he was arrested after being caught searching a parked car on which the trunk had been pried open. On the basis of this incident, the juvenile court found an allegation of felony automobile burglary to be true. (§ 459.) Campbell was placed out of home for the next six months. By the time he neared his 16th birthday, a warrant had issued for his arrest after he failed to return to his mother’s home one night.

Once he turned 16, Campbell was arrested for stealing a woman’s purse, driving a stolen vehicle, and fleeing from police. A juvenile court sustained a finding that he had committed felony second degree robbery and felony fleeing from a police officer with willful and wanton disregard for safety. (§§ 211, 211.5, subd. (c); Veh. Code, § 2800.2, subd. (a).) In the next few months, he was twice placed out of home and twice went AWOL from these placements.

Before he turned 17, Campbell was arrested on charges that he committed two strong-arm robberies. The juvenile court sustained allegations that he had committed

² Section 12021 has been amended since the date of the charged crime. However, the current and former versions are substantially similar for the purposes of our decision. (Compare Stats. 2010, ch. 689, § 3 with Stats. 2006, ch. 538, § 526.)

these felony second degree robberies and committed him to the California Youth Authority (CYA).³ After his 17th birthday, the CYA commitment order was set aside and Campbell was placed on probation. Once he reached age 18, his wardship was dismissed and the grant of probation was terminated.

In November 2006, 18-year-old Campbell was arrested for driving a stolen vehicle. In January 2007, he was convicted of felony unlawful taking or driving of a vehicle, based on his no contest plea. (Veh. Code, § 10851, subd. (a).) He was granted a five-year term of probation and warned about the potential consequences of further law violations. Less than two months later, Campbell shot and killed Morris.

In November 2009, the trial judge sentenced Campbell to a total term of 40 years to life in prison. For the second degree murder conviction, he was given a term of 15 years to life, which was doubled pursuant to the Three Strikes law based on that strike. (§§ 667, subd. (e)(1), 1170.12, subd. (c)(1).) A consecutive 10-year term was added for the personal firearm use enhancement. (§ 12022.53, subd. (b).) A four-year concurrent term for the possession of a firearm by an ex-felon conviction was also imposed. The trial court stayed sentence on the other firearm use enhancement on multiple punishment grounds. (See § 654.)

II. MOTION TO STRIKE

A. Standard of Review

On appeal, Campbell contends the trial court abused its discretion by denying his motion to strike his prior strike. He reasons that the trial court had no reasonable basis for doubling his murder sentence based on his juvenile adjudication of robbery. The trial court found Campbell was a career criminal who came within the spirit of the Three Strikes law based on his adult and juvenile criminal record, his poor performance in placements and on probation, and his failure to heed numerous warnings to stem his criminal conduct. It found no extraordinary circumstances present to warrant an exception to the Three Strikes sentencing scheme.

³ This adjudication formed the basis of the strike that is central to this appeal.

A trial court has discretion to strike a prior felony conviction that qualifies as a strike under the Three Strikes law. (§ 1385; *People v. Carmony* (2004) 33 Cal.4th 367, 377 (*Carmony*); *People v. Williams* (1998) 17 Cal.4th 148, 158 (*Williams*); *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 530 (*Romero*).) This authority includes the power to strike a prior conviction at sentencing after the strike has been alleged and found true. (*Romero, supra*, 13 Cal.4th at p. 524, fn. 11.) Although this power is broad, it is not absolute. (*People v. Orin* (1975) 13 Cal.3d 937, 945.) A prior felony conviction underlying a strike may be stricken in extraordinary circumstances when the court feels the career criminal falls outside the spirit of the Three Strikes law. (*Carmony, supra*, 33 Cal.4th at p. 378; *People v. Strong* (2001) 87 Cal.App.4th 328, 338.) The strike may be stricken only if the decision would be in the furtherance of justice, taking into account both the constitutional rights of the defendant and the interests of society in the fair prosecution of properly charged crimes. (§ 1385, subd. (a); *Romero, supra*, 13 Cal.4th at pp. 530-531; *People v. Orin, supra*, 13 Cal.3d at pp. 945, 947.)

A sentence conforming to the Three Strikes sentencing scheme retains a strong presumption that the decision was rational and proper. (*Carmony, supra*, 33 Cal.4th at p. 378.) To justify disregarding the Three Strikes sentencing scheme, the trial court must determine that the defendant falls outside the scheme's spirit. It does so by considering the nature, severity, and frequency of both the present offense and the prior conviction, as well as the defendant's background, character, and prospects. (*Id.* at p. 377; *Williams, supra*, 17 Cal.4th at p. 161.) Unless the balance of considerations falls clearly in favor of the defendant, the trial court should not dismiss the strike. (See *Carmony, supra*, 33 Cal.4th at p. 375.)

On appeal, we review the trial court's ruling on a motion to set aside for an abuse of discretion. (*Carmony, supra*, 33 Cal.4th at pp. 374-376; *Williams, supra*, 17 Cal.4th at pp. 158-159; *Romero, supra*, 13 Cal.4th at p. 530.) Campbell bears the burden of demonstrating that the ruling falls outside the bounds of reason. (See *Carmony, supra*, 33 Cal.4th at p. 376; *Williams, supra*, 17 Cal.4th at p. 162; *People v. DeSantis* (1992) 2 Cal.4th 1198, 1226.)

B. *Age and Maturity*

Campbell's main contention is that the trial court failed to conduct a proper individualized evaluation of his motion to set aside the strike. He reasons that an appropriate review would have taken into consideration his lack of maturity at the time of the murder. He argues that juveniles are more vulnerable to negative external influences, such that their culpability is lower than adults. (See, e.g., *Roper v. Simmons* (2005) 543 U.S. 551, 571.)

This argument assumes that the trial court failed to consider the effect his age had on his culpability. The record does not support this assumption. During sentencing, the trial court listed his age as a mitigating factor. When discussing Campbell's prior juvenile adjudications or adult convictions, either a date or Campbell's age was given. That Campbell's lack of maturity did not persuade the court to grant his motion to strike does not constitute an abuse of discretion.

C. *Weapon Possession*

Campbell also contends that the trial court erred when it stated that he possessed a firearm by age 16 and relied on that assertion to support its denial of his motion. He argues this factual finding was unsupported by the record and that the court abused its discretion by relying on it.

A trial court abuses its discretion when denying a motion to strike if *none* of the reasons cited are supported by the record. (See *Carmony, supra*, 33 Cal.4th at p. 379; *People v. Cluff* (2001) 87 Cal.App.4th 991, 998.) In Campbell's case, the possession of a weapon was only one factor cited in support of denial of the motion. The trial judge also based his denial of the motion to strike on Campbell's multiple juvenile adjudications and his prior felony conviction, his poor performance on probation and during placement at CYA and in other out-of-home placements, and its conclusion that he qualified as a statutory career criminal. In these circumstances, a reasonable judge could still conclude that Campbell fell within the spirit of the Three Strikes law, even without evidence of gun possession. Thus, we find that no abuse of discretion occurred.

D. *Interpretation of Three Strikes Law*

Next, Campbell claims the trial court erred by considering the decision of prosecutors to not charge his December 2004 and June 2005 juvenile adjudications for robbery as five-year prior convictions under the Three Strikes law.⁴ (§ 667, subd. (a)(1).) Campbell reasons that while a juvenile adjudication can form the basis of a strike under the Three Strikes law, it cannot be used as a five-year prior conviction enhancement under that law. (See § 667, subd. (a); *People v. West* (1984) 154 Cal.App.3d 100, 106-110.)

Campbell's reliance on older case law is misplaced, as a 1994 amendment now allows some juvenile adjudications to be treated as felony convictions under this provision. (§ 667, subd. (d)(3).) While a juvenile and over the age of 16, Campbell was thrice adjudicated as having committed robbery. (§ 211.) Each of these adjudications constituted a prior felony conviction under the Three Strikes scheme for potential use as a strike or a five-year enhancement. (See §§ 667, subd. (d)(3)(A)-(D), 667.5, subd. (c)(9), 1192.7, subd. (c)(19).) It was within the trial court's discretion to consider that those prior convictions were *not* charged as strikes or five-year enhancements when ruling on the motion to set aside the strike that *was* charged and proven.

E. *Spirit of the Three Strikes Law*

Finally, Campbell challenges his designation as a career criminal within the spirit of the Three Strikes law, arguing that the designation has no reasonable basis in his case, because his only strike occurred when he was age 16 and his current offense was committed when he was 18. He reasons that a sentence of 25 years to life would have served an equal or more advantageous purpose than subjecting him to the enhanced one strike sentence. We disagree.

This designation was not based solely on the charged strike and the current offense. Campbell's lengthy juvenile and criminal history, numerous juvenile delinquency petitions, increasing seriousness of allegations, and the fact that the murder

⁴ The trial judge also reasoned that the prosecution could have alleged three prior strikes against him instead of the one, based on these findings.

was committed while Campbell was on probation combine to warrant his classification as a career criminal. (See § 667, subds. (b)-(i); see also *People v. Strong, supra*, 87 Cal.App.4th at p. 347.) The trial court did not err by characterizing him as a career criminal.

F. *No Abuse of Discretion*

The trial court did not abuse its discretion in denying the motion to set aside the strike. Campbell's juvenile and criminal history began when he was 14 years old. When he was 16 years old, he committed three second degree robberies. As a ward of the juvenile court, he repeatedly violated the terms of his probation, left placements without permission, and was committed to the CYA. (See pt. I., *ante*.) He was given repeated opportunities to correct his criminal behavior. The Morris shooting occurred less than two months after he was granted probation after a felony conviction as an adult. On this record, Campbell cannot establish that he fell outside the spirit of the Three Strikes law. The trial court did not abuse its discretion when denying his motion to set aside his strike.

The judgment is affirmed.

Reardon, Acting P.J.

We concur:

Sepulveda, J.

Rivera, J.