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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMIE LYNN ELKINS,

Defendant and Appellant.

A127689

(Solano County  
Super. Ct. No. VCR197331)

Jamie Lynn Elkins was convicted of involuntary manslaughter after she shot and killed her abusive boyfriend during an argument. Elkins contends the trial court abused its discretion when it denied her probation and sentenced her to a seven-year term in state prison. We disagree and affirm.

**BACKGROUND**

Elkins lived with Royce Love for more than two years. They had two children together, and Love would beat her repeatedly. During a domestic argument, Elkins claimed that she removed Love's gun from a kitchen drawer, released the safety, and accidentally brushed the trigger. The gun went off, and Love was shot in the head and killed. Elkins sought help from neighbors, and asked them to call 911.

When she was interviewed by police, Elkins first claimed that Love pulled the gun on her and it discharged as she grabbed it. She later said she took the gun to hide it from Love, and she eventually said she took the gun to make Love angry. She intentionally released the safety to scare him, and she told police the gun was pointed in Love's

direction but not aimed at him. She consistently said she barely touched the trigger when the gun went off, and the shooting was an accident.

Elkins was charged with murder and personal discharge of a firearm. At trial, she presented witnesses who described Love's violent and abusive behavior, and a psychologist who concluded she was "a classic textbook example of a battered woman." Elkins also presented a criminalist who said the gun had what "border[ed] on . . . a hair trigger." But this testimony was rebutted by a police criminalist who testified the gun's trigger-pull was not unusual for a single-action pistol, and the gun never fired unexpectedly while he was testing it.

Elkins also testified. She described Love's history of violent behavior towards her, and said he went to jail because of it. The week before the shooting, Love was waving the gun around and threatened to kill Elkins. She wanted the gun out of the house, and on the day of the shooting, was holding the gun when they began to argue. She took the safety off because she was scared of Love. She acknowledged that she never told this to police. Elkins said she lied to police when she said she pulled the gun away from Love, and she did not want to admit she released the safety because she was "very scared" and "worried about what the situation looked like." She said she never intended to shoot Love, and the gun fired accidentally.

The jury found Elkins not guilty of murder, but guilty of the lesser included offense of involuntary manslaughter, with personal use of a firearm. The probation officer recommended a seven-year prison sentence consisting of mid-terms for both the involuntary manslaughter and the firearm use enhancement. The presentencing report determined Elkins was statutorily eligible for probation under California Rules of Court, rule 4.413(c)(2)(C)<sup>1</sup> because of her youth and lack of a criminal record, but concluded she was "inappropriate for probation services based upon the severity of the offense."

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<sup>1</sup> All further references to rules are to the California Rules of Court.

The report noted Elkins attempted to deceive police with a story about a struggle over the weapon. It did not appear that Love presented an immediate danger that justified Elkins's resort to the gun, and she had an opportunity to withdraw from the situation rather than engage in the argument. Although Elkins expressed remorse, she "appeared to minimize the severity of her actions, as further evidenced by her statement that she had already spent enough time in custody. She maintained she acted in self-defense despite the fact the victim was unarmed and he did not pose any immediate danger. She primarily focused on portraying herself as a victim and attempting to justify her actions. The defendant appeared to lack insight into her behavior in that she focused more on the impending consequences upon her own life, rather than to reflect on the seriousness of her behavior and the fact that it has resulted in death."

The district attorney requested that the court impose the low term for involuntary manslaughter and the high term for use of the firearm, to run consecutively, for a total term of 12 years. Defense counsel asked for probation, and if not, the low terms for both the offense and the enhancement, for a total of five years. During the sentencing colloquy, the court noted that Elkins initially denied releasing the safety on the gun when she spoke with police. When defense counsel suggested the court should consider Elkins's acknowledgement of responsibility, the court agreed "she's not criminally sophisticated. That's for sure." The court noted as "very unusual" Elkins's young age and lack of prior criminal history.

After considering probation, the court concluded that the relevant circumstances showed that probation would not serve the interest of justice. The court sentenced Elkins to an aggregate term of seven years, consisting of the mid-term of three years for involuntary manslaughter and the mid-term of four years for personal use of a firearm. She received 761 days of presentence credits. Elkins timely appealed.

## DISCUSSION

A defendant “who used . . . a deadly weapon upon a human being in connection with the perpetration of the crime of which he or she has been convicted” is not eligible for probation “[e]xcept in unusual cases where the interests of justice would best be served if the person is granted probation . . . .” (Pen. Code, § 1203, subd. (e)(2).) Rule 4.413(b) lists criteria to be applied by the court “to evaluate whether the statutory limitation on probation is overcome; and if it is, the court should then apply the criteria in rule 4.414 to decide whether to grant probation.” (Rule 4.413(b).) Probation is not a right, but an act of clemency (*People v. Johnson* (1993) 20 Cal.App.4th 106, 109), and the trial court’s discretion in determining whether to grant probation is broad. (*People v. Warner* (1978) 20 Cal.3d 678, 682-683.)

Elkins acknowledges that “a decision denying probation will not be disturbed on appeal except upon a clear showing the trial court abused its discretion in an arbitrary or capricious manner,” and “ ‘[a] heavy burden is placed on a defendant in attempting to show [such] an abuse of discretion . . . .’ ” (*People v. Stuart* (2007) 156 Cal.App.4th 165, 179; see *People v. Marquez* (1983) 143 Cal.App.3d 797, 803.) Elkins also concedes she was presumptively ineligible for probation because she used a firearm during the commission of the offense. But nevertheless, she argues this case should be remanded for resentencing because it is unusual within the criteria of rule 4.413 and probation was arbitrarily denied under the criteria of rule 4.414.

The court obviously considered Elkins’s case to be unusual because it considered placing her on probation in spite of her use of a firearm. But the record does not support Elkins’s argument that the court abused its discretion when it determined she was not suitable for probation in light of the relevant facts and the factors set forth in rule 4.414. (See *People v. Stuart, supra*, 156 Cal.App.4th at pp. 178-179 [decision denying probation will not be reversed merely because reasonable people might disagree].)

Elkins offers several arguments in support of probation. First, she says her offense was less serious than comparable involuntary manslaughters resulting from the use of a firearm because Love's death was an accident that occurred as Elkins negligently handled his gun after enduring his abuse for many years, and because she had no criminal history. (Rule 4.413(c)(1)(A).) Elkins contends her case also warranted probation because the years of abuse by Love, who placed her and her children in constant risk, mitigates her crime. (Rule 4.413(c)(2)(B).) At the time of the shooting, Elkins had just turned 20 years old and had three children under the age of three. She also argues the facts relating to the crime favor a grant of probation under rule 4.414(a), because she fired only one shot, unintentionally, from a gun "bordering on . . . a hair trigger," while she was trying to remove the gun from the family home and hide it from Love. She immediately sought help and admitted she fired the gun. She also says that facts favor a grant of probation under rule 4.414(b), because she was willing to comply with the terms of probation and she was eager to be reunited with her three young children, who were being cared for by family members whose resources were limited and "who had shown little care and consideration for [Elkins] during her formative years." Elkins also says she showed "deep remorse," and would not be a danger to others.

The trial court received and considered the parties' extensive submissions on the issue of sentencing that addressed the criteria listed in rule 4.414, as well as the probation officer's lengthy presentence report. While evidence relating to several of the rule 4.414 factors arguably favored Elkins's suitability for probation, she cites no legal authority to support her conclusion "that probation was the only appropriate sentencing choice." The court expressed its sentencing decision as follows: "In any event, I have considered granting probation to the defendant, and I have considered all the law that applies in that regard, circumstances supporting a grant of probation, circumstances against it, and I don't think the interest of justice would be served by granting her probation based on that analysis."

The conflicting information in the record supports the trial court’s exercise of its discretion. (See *People v. Stuart*, *supra*, 156 Cal.App.4th at pp. 179-182; *People v. Vargas* (1975) 53 Cal.App.3d 516, 533 [despite existence of “ample facts before the court to warrant a grant of probation,” appellate court will not interfere with trial court’s exercise of discretion “when it has considered all facts bearing on the offense and the defendant to be sentenced”]; see also rule 4.409 [relevant criteria enumerated in rules of court will be deemed to have been considered by sentencing judge “unless the record affirmatively reflects otherwise”].) Although she was a long term victim of domestic abuse, Elkins killed Love with a firearm. Moreover, the killing was the final act in a combative long term relationship that Elkins was repeatedly told to leave. She lied to police, and the court had ample reason to decide that the killing deserved the mid-range of confinement. Because Elkins has not carried her burden “to clearly show the [denial of probation] was irrational or arbitrary,” the court’s discretionary determination will not be set aside on review. (*People v. Carmony* (2004) 33 Cal.4th 367, 376-377.)

### **DISPOSITION**

The judgment is affirmed.

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Siggins, J.

We concur:

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Pollak, Acting P.J.

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Jenkins, J.

*People v. Elkins*, A127689