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# IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

# FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS CABRERA,

Defendant and Appellant.

F090127

(Super. Ct. No. DF013794B)

## OPINION

## THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Andrew Kendall, Judge.

Michael S. McCormick, under appointment by the Court of Appeal, and Carlos Cabrera, in propria persona, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Levy, Acting P. J., Meehan, J. and DeSantos, J.

Defendant Carlos Cabrera was resentenced pursuant to Penal Code section 1172.75.[1] Appointed counsel for defendant asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised of his right to file a letter stating any grounds on appeal within 30 days of the date of filing of the opening brief. Defendant filed a letter requesting our court review the trial court's denial of his *Romero*[2] motion and whether any new changes in sentencing laws apply to his case. He has identified no basis for relief, nor have we. We affirm.

## PROCEDURAL SUMMARY

On October 3, 2018, the Kern County District Attorney filed a complaint charging defendant with possession of a weapon in prison (§ 4502, subd. (a); count 1). The complaint further alleged defendant suffered two prior strike convictions[3] (§§ 667, subds. (c)–(j), 1170.12, subds. (a)–(e)).

On December 14, 2018, an amended complaint was filed, further alleging defendant suffered a prior prison term (§ 667.5, subd. (b)). Defendant pled no contest to the weapon charge, stipulated to a factual basis for the plea, and admitted the prior strike convictions and the prior prison term pursuant to a negotiated plea agreement that he would be sentenced to a total term of three years, to be served consecutively to his current prison term.

On January 29, 2019, the trial court sentenced defendant to a consecutive term of three years as agreed, as follows: on count 1, two years (one-third the mid-term,

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1 All further undesignated statutory references are to the Penal Code.

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

3 The complaint alleged that defendant's prior strike convictions occurred in 1999 and 2013.

doubled pursuant to the "Three Strikes" law); plus one year for the prior prison term (§ 667.5, subd. (b)).

On November 2, 2023, the trial court requested a supplemental probation report after receiving notice from the Department of Corrections and Rehabilitations (CDCR) and scheduled a hearing for December 5, 2023, regarding defendant's section 667.5, subdivision (b) enhancement.

On December 5, 2023, the trial court appointed defense counsel and continued the hearing to January 19, 2024. The court continued the matter several times, primarily due to difficulties in securing the presence of defendant from prison on videoconference.

On July 11, 2025, the trial court conducted a resentencing hearing. It stated that CDCR identified defendant as having a prior prison term pursuant to section 667.5, subdivision (b), recalled defendant's sentence and stated he was entitled to a full resentencing hearing. The court admitted into evidence the certified copy of defendant's rap sheet. The court stated it considered the probation report filed in defendant's case. Defense counsel stated the trial court was required to strike the prior prison term (§ 667.5, subd. (b)), requested the court consider any other available reductions in the sentence, and made an oral *Romero* motion to strike the two prior strike convictions. The court asked defense counsel whether there were any factors in mitigation. Defense counsel responded that he did not have any information on mitigation to support the *Romero* motion and submitted on the matter. The prosecution opposed the *Romero* motion, arguing that defendant had an extensive criminal history. The court struck the prior prison term (§ 667.5, subd. (b)) and denied defendant's *Romero* motion, stating defendant had an "extensive criminal history" and that the court did not receive any information regarding rehabilitative efforts made by defendant in prison. The court imposed a total term of two years on count 1 (one-third the mid-term, doubled pursuant to the Three Strikes law), consecutive to defendant's current prison term.

On July 11, 2025, defendant filed a timely notice of appeal.

## DISCUSSION[4]

### *Wende* Review

As noted above, defendant's appellate counsel filed a brief pursuant to *People v. Wende*, *supra*, 25 Cal.3d 436, asserting he could not identify any arguable issues in this case. After defendant's appellate counsel filed his *Wende* brief, by letter dated April 1, 2026, we invited defendant to inform this court of any issues he wished addressed. On May 5, 2026, defendant filed a letter requesting our court review the trial court's denial of his *Romero* motion and whether any changes in sentencing laws are applicable to his case.

Here, the following colloquy regarding a *Romero* motion occurred between the trial court, prosecution, and defense counsel:

> "THE COURT: There are two prior strikes. The [c]ourt could consider *Romero* of both of the strikes. [¶] Do you wish to argue about that?
>
> "[DEFENSE COUNSEL]: Yes. And I would ask that the *Romero* be applied to eliminate [defendant's] prior strike. Both, if not one. And I will submit on that request.
>
> "THE COURT: I did not receive any information, though, in mitigation about your client's rehabilitative efforts. [¶] Did you have information you wanted to provide in that regard?
>
> "[DEFENSE COUNSEL]: I do not, Your Honor. I'm submitting.
>
> "THE COURT: [Prosecution], as to the *Romero* request?
>
> "[PROSECUTION]: Submitted. Just asking that the [c]ourt refer to [defendant's] conviction history. On that, [the prosecution] submit[s].
>
> "THE COURT: Any other argument? I'll give you the final word, [defense counsel].

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[4] The record does not include any summary of the facts of the underlying offense. Defendant pled no contest to the underlying offense as part of a negotiated plea agreement.

"[DEFENSE COUNSEL]: No further argument. Thank you.

"THE COURT: And the [c]ourt recalls the sentence in this case. There was a prison prior identified by CDCR on the list. Probation then prepared the report, November 28[], 2023. We did detail to some degree some of the delays, which were not attributable to [defense counsel], in getting [defendant] into court, which we now have accomplished today, on July 11[], 2025.

The original sentence is recalled. The [c]ourt strikes the prison prior pursuant to [section] 667.5. [The] [c]ourt's conducting a full resentencing. The [c]ourt will not exercise its discretion under [section] 1385 to strike the strike pursuant to *People v. Romero* based on the facts of this case and the defendant's criminal history, including that—the case we're here for is a second in-prison offense after there already were convictions in Los Angeles Superior Court [case Nos.] MA058251-01, MA05740-01 and MA057709-01. The certified rap sheet also includes this information, the extensive criminal history of [defendant]. The [c]ourt finds he is well within the spirit of the Three Strikes rule, and it would be an abuse of discretion to grant a *Romero* in this case.

The [c]ourt did not receive any information regarding [defendant's] rehabilitative efforts while incarcerated in CDCR, so [it] does not have a basis to find that he is not within the spirit of the Three Strikes [l]aw.

[The c]ourt will proceed, then, with the sentencing as to [c]ount 1. Probation is denied. [D]efendant is sentenced to [CDCR] for the period of time of two years, which is one-third the mid-term. Said sentence is to be served consecutive to the sentence imposed in [case No.] DF011800A, total fixed term in prison of six years. Said sentence to be served fully consecutively to the sentence imposed in Los Angeles County Superior Court [c]ase [Nos.] MA058251-01, MA050407-01 and MA057709-01."

The intent 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 serious and/or violent felony offenses.' " (*People v. Strong* (2001) 87 Cal.App.4th 328, 337, disapproved on other grounds by *People v. Dain* (2025) 18 Cal.5th 246, 265, fn. 5.) The Three Strikes law establishes a sentencing norm for longer sentences for repeat offenders and "carefully circumscribes the trial court's power to depart from this norm and requires the court to explicitly justify its decision" to strike a prior strike conviction.

(*People v. Carmony* (2004) 33 Cal.4th 367, 378.) However, "no similar requirement applies when a court declines to strike a prior [strike conviction]." (*In re Large* (2007) 41 Cal.4th 538, 550.) "In doing so, the law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper." (*Carmony*, at p. 378.)

The lower court must determine "whether, in light 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, the defendant may be deemed outside the [Three Strikes] 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; see *People v. Strong*, *supra*, 87 Cal.App.4th at p. 336 [The "spirit" of a law refers to that law's " 'general meaning or purpose' "].) "[T]he sentence imposed by the trial court is itself a factor" when deciding a defendant's prospects for committing future crimes because the defendant will have fewer opportunities to commit crimes while incarcerated. (*People v. Gaston* (1999) 74 Cal.App.4th 310, 315, disapproved on other grounds by *People v. Dain*, *supra*, 18 Cal.5th at p. 265, fn. 5.) Also, the extent of a defendant's criminal record is "undeniably relevant" to the factors outlined in *Williams*. (*People v. Garcia* (1999) 20 Cal.4th 490, 498–499, 501–502.) "[T]he presence of mitigating evidence is not enough to render the trial court's decision an abuse of discretion." (*People v. Bernal* (2019) 42 Cal.App.5th 1160, 1170.)

Here, the trial court discussed its discretion to strike defendant's prior strikes, and the factors it was required to consider. It also inquired about mitigating factors, such as rehabilitative efforts made by defendant in prison, but defense counsel declined to present any. The court then discussed its consideration of defendant's "extensive criminal history," including the commission of numerous offenses after the prior strike convictions; that he was already incarcerated when he committed the instant offense; the

nature of the instant offense; and that the instant offense was his second offense while incarcerated. It then explained that, balancing these factors, defendant does not fall outside the spirit of the Three Strikes law. No error resulted from denial of defendant's *Romero* motion.

After a thorough review of the record, we agree with defendant's appellate counsel there are no arguable issues in this case. There is nothing in this record to suggest any error occurred.

## DISPOSITION

The judgment is affirmed.