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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.

RONALD DALE BENNETT,

Defendant and Appellant.

E079175

(Super.Ct.No. FVI21001387)

OPINION

APPEAL from the Superior Court of San Bernardino County. Tony Raphael, Judge. Affirmed.

Randall Conner, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Charles C. Ragland, Assistant Attorney General, Arlene A. Sevidal, Randall D. Einhorn and Susan Elizabeth Miller, Deputy Attorney Generals, for Plaintiff and Respondent.

In the first half of a bifurcated jury trial, the jury found defendant and appellant Ronald Dale Bennett guilty of first-degree murder (Pen. Code, § 187, subd. (a), 189, subd. (a))¹ and torture (§ 206). In the second half of the trial, the jury found true the allegation that defendant had suffered a conviction in May 2014; that prior conviction qualified as a strike (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and as a serious felony (§ 667, subd. (a)(1)). The trial court sentenced defendant to prison for a term of 55 years to life. Defendant contends his trial counsel was ineffective for failing to argue that the prior serious felony enhancement (§ 667, subd. (a)(1)) should be dismissed because more than five years had passed since the 2014 conviction (§ 1385, subds. (c)(2) & (c)(3)(H))². We affirm.

FACTUAL AND PROCEDURAL HISTORY

A. DEFENDANT’S CRIMES

At the sentencing hearing, the prosecutor summarized the murder and torture as follows: “The victim was disabled [in that his prosthetic leg was taken from him], vulnerable, out numbered, and unarmed. The victim was beaten over a 30 to 45 minute period, if not longer. Some of the evidence at trial indicated that it was much longer. The victim had been knocked out unconscious so was already in a vulnerable state before the beating continued wherein he was stabbed multiple times, beaten with metal

¹ All subsequent statutory references will be to the Penal Code, unless otherwise indicated.

² We cite the version of section 1385 that was in effect at the time of defendant’s sentencing hearing, on June 13, 2022. (§ 1385, subd. (c)(7).)

rebar, dragged back into an encampment. And then while he still breathed, while he still tried to hang on, the defendant . . . covered [the victim's] body in flammable material, likely in some sort of oil or something to get that fire going, and lit the victim on fire while he was still alive.”

Defendant murdered the victim in the instant case in March 2021. Defendant's prior conviction occurred in May 2014, when he pled no contest to the charge of making criminal threats (§ 422, subd. (a)).

B. SENTENCING

On June 13, 2022, at defendant's sentencing hearing, defendant's trial attorney moved for dismissal of the prior strike, arguing: (1) the strike offense was eight years old; (2) defendant did not instigate the murder and others involved in the crime received lesser sentences; (3) defendant is 57 years old, so a sentence of 50 years to life is effectively a life sentence; and (4) defendant did “not have any serious convictions since before 1990.”

In opposing the motion, the prosecutor argued that (A) “defendant was aware of the victim's vulnerabilities”; (B) “defendant took part in the initial beating”; (C) defendant was the person “who took what started out as perhaps just a beating and turned it into murder”; and (D) defendant “raised the circumstances even further by turning what went from a beating to a murder into a torture by burning the victim alive.” Further, the prosecutor contended defendant “has a lengthy criminal history” and “a continuing pattern of criminal conduct.” Lastly, the prosecutor argued that defendant failed to demonstrate an attempt to improve his life.

The trial court found: (i) defendant “does not have the most serious criminal history,” but “his criminal history is increasing in seriousness”; (ii) the victim “was a very vulnerable victim. He had a prosthetic leg and wasn’t able to fend for himself”; and (iii) “the murder was committed in a very gruesome way over a period of time. The defendant had many opportunities to stop the killing.”

In terms of the age of the prior conviction, the trial court said, “And the defendant was sentenced to state prison for 16 months. He violated parole [in 2017] after his release on parole and he was sentenced to 150 days in jail. And his most recent misdemeanor conviction was in 2018 where he was placed on summary probation with 28 days in jail. So I would note with the 2014 conviction, this is not an old felony conviction.” The trial court concluded, “So I find the nature and circumstances of the offense to outweigh any other mitigating factors to the extent they exist. And there are none in this case.” The trial court denied defendant’s *Romero*³ motion.

Defendant’s trial counsel argued that the prior serious felony enhancement (§ 667, subd. (a)(1)) should be dismissed because other people involved in the murder “received much lighter sentences.” The trial court said, “Under 1385, the Court also has discretion to strike the nickel prior, the 667(a)(1). The court is not inclined to strike the nickel prior. I recognize the discretion that the Court has but in light of the circumstances of the present offense, as I stated earlier in ruling on the *Romero* motion, the Court also declines to strike the five-year enhancement for a prior serious felony.”

³ *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

Defendant's 55 years to life sentence is comprised of 25 years to life for the murder, doubled to 50 years to life for the prior strike, plus five years for the prior serious felony enhancement.

DISCUSSION

Defendant contends his trial counsel was ineffective because counsel failed to argue "that the age of the prior conviction required dismissal of the prior serious felony enhancement unless such dismissal would endanger public safety as defined in amended section 1385, subdivision (c)(2)."

When seeking to establish ineffective assistance of counsel, "the defendant must first show counsel's performance was deficient, in that it fell below an objective standard of reasonableness under prevailing professional norms. Second, the defendant must show resulting prejudice, i.e., a reasonable probability that, but for counsel's deficient performance, the outcome of the proceeding would have been different. When examining an ineffective assistance claim, a reviewing court defers to counsel's reasonable tactical decisions, and there is a presumption counsel acted within the wide range of reasonable professional assistance. It is particularly difficult to prevail on an appellate claim of ineffective assistance. On direct appeal, a conviction will be reversed for ineffective assistance only if (1) the record affirmatively discloses counsel had no rational tactical purpose for the challenged act or omission, (2) counsel was asked for a reason and failed to provide one, or (3) there simply could be no satisfactory explanation. All other claims of ineffective assistance are more appropriately resolved in a habeas corpus proceeding." (*People v. Mai* (2013) 57 Cal.4th 986, 1009.)

Section 1385, subdivision (c)(2), provides, “Notwithstanding any other law, the court shall dismiss an enhancement if it is in the furtherance of justice to do so [¶] In exercising its discretion under this subdivision, the court shall consider and afford great weight to evidence offered by the defendant to prove that any of the mitigating circumstances in subparagraphs (A) to (I) are present. Proof of the presence of one or more of these circumstances weighs greatly in favor of dismissing the enhancement, unless the court finds that dismissal of the enhancement would endanger public safety. ‘Endanger public safety’ means there is a likelihood that the dismissal of the enhancement would result in physical injury or other serious danger to others.” One of the enumerated mitigating circumstances is “[t]he enhancement is based on a prior conviction that is over five years old.” (§ 1385, subd. (c)(3)(H).)

At the sentencing hearing, when the trial court analyzed the factors in aggravation and mitigation for the *Romero* motion, it found (1) defendant’s crimes were increasing in seriousness; (2) defendant repeatedly committed crimes, in that he was convicted in 2014, violated parole in 2017, convicted in 2018, and committed the instant murder in 2021; (3) the murder in the instant case “was committed in a very gruesome way over a period of time. The defendant had many opportunities to stop the killing”; and (4) the other people involved in the murder “looked up to [defendant], they listened to him and he could have stopped it. He chose not to.” The trial court found no mitigating factors.

In deciding whether to strike the prior serious felony enhancement, the trial court said, “Under 1385, the Court also has discretion to strike the nickel prior, the 667(a)(1).

The court is not inclined to strike the nickel prior. I recognize the discretion that the Court has but in light of the circumstances of the present offense, as I stated earlier in ruling on the *Romero* motion, the Court also declines to strike the five-year enhancement for a prior serious felony.”

One could reasonably interpret the court’s comments as deciding that the dismissal of the serious felony enhancement (§ 667, subd. (a)(1)) would endanger public safety (§ 1385, subd. (c)(2)), due to defendant repeatedly committing crimes of increasing seriousness, defendant being involved in a gruesome murder, and defendant leading others to be involved in the gruesome murder. Given that interpretation of the trial court’s comments, the issue under section 1385, subdivision (c)(2), was decided, so there was no reason for defendant’s trial counsel to argue the issue.

Moreover, the record is replete with references to an off-the-record discussion, involving the trial court and trial counsel, concerning defendant’s sentence, which occurred in chambers on the morning of the sentencing hearing. Given that there was an off-the-record discussion about sentencing, it is possible the section 1385, subdivision (c)(2), issue was expressly discussed at that time.

Defendant contends his trial counsel should have argued that “reducing a 57-year-old man’s sentence from 55-years to life to 50-years to life does not endanger public safety.” In the *Romero* motion, defendant’s trial counsel argued, “[Defendant] is fifty-seven years old.” Thus, defendant’s trial counsel raised the issue of defendant’s age to the trial court, and the trial court was not persuaded by the issue. In sum, defendant has not demonstrated that his trial counsel’s performance fell below an

objective standard of reasonableness under prevailing professional norms.

Consequently, we will not address the prejudice prong of the analysis.

DISCUSSION

The judgment is affirmed.

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MILLER
J.

We concur:

McKINSTER
Acting P. J.

CODRINGTON
J.