Filed 7/21/09 P. v. Dantignac CA2/7

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. TAURUS DANTIGNAC, Defendant and Appellant.	B210094 (Los Angeles County Super. Ct. No. BA324566)

APPEAL from a judgment of the Superior Court of Los Angeles County. Robert Perry, Judge. Affirmed.

Patrick Morgan Ford, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Paul M. Roadarmel, Jr. and Eric J. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

Taurus Dantignac was sentenced to 125 years to life plus 30 years in state prison for a series of armed robberies. On appeal, he contends that the evidence of his prior strike convictions was insufficient; that the use of a priors packet violates the Confrontation Clause; that the trial court abused its discretion when it refused to strike his prior convictions; and that his sentence constitutes cruel or unusual punishment under the California Constitution. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Dantignac robbed Deron Tse at gunpoint, took his wallet and cellular telephone, and asked for Tse's automatic teller personal identification number (counts 1 and 2). He later robbed Daniel Lee, claiming to have a gun. Dantignac took Lee's wallet, iPod, cellular telephone, and watch, and demanded Lee's automatic teller personal identification number (counts 3 and 4). The following month, he robbed Jane Blanco with a handgun and stole her car (counts 5 and 6). Dantignac was charged with three counts of robbery (Pen. Code,[1] § 211) (counts 1, 3, and 6); two counts of acquiring an access card with the intent to defraud (§ 484e, subd. (d)) (counts 2 and 4); and carjacking (§ 215, subd. (a)) (count 5).

In the information, it was alleged, inter alia, that Dantignac had suffered 11 previous offenses qualifying as strikes (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), all robberies; that he had suffered two prior serious felony convictions within the meaning of section 667, subdivision (a)(1); that he had twice previously served prison terms for violent felonies and did not remain free from custody for a period of 10 years (§ 667.5, subd. (a)(1)); that he had served a felony sentence in state prison and had not remained free from custody for five years (§ 667.5, subd. (b)(1)); and that he had personally used a firearm while committing counts 1, 5, and 6 (§ 12022.53, subd. (b)). Dantignac opted for a court trial on his prior convictions. The trial court found that Dantignac was the same

[1] Unless otherwise indicated, all statutory references are to the Penal Code.

person who had suffered "a great number of prior convictions as reflected in this [section 969b] package." The court identified one judgment of conviction with 11 offenses (10 of which were robberies), a separate robbery conviction, and a narcotics conviction. The court concluded, "It is pretty clear to me that the defendant has a number of prior felony convictions. And the case before Judge Ito is Case BA 073778 [the 11-count case]. So I think the People have more than met their proof of the strike priors and the [section] 667[, subdivision] (a)(1)] prior. [¶] Frankly, I don't plan to impose a sentence for the [section] 667.5[, subdivision] (a) prior. But I think that they've met their proof on that as well."

Dantignac requested that the court strike 10 of his 11 strikes. The court declined, stating, "The defendant's record speaks for itself. [¶] What is most troubling is that he appears—the man before me with a record that suggests he is a serial robber. [Eleven] counts of robbery for which he stands convicted in 1994, that case followed a conviction in 1990 for second degree robbery to which he was sentenced to two years in custody. Just here he comes out of prison and starts robbing people again. I just think that the Three Strikes Law was intended for persons with the kind of record that your client has. And I am not inclined to strike any of those strikes and certainly not such a great number as you suggest." The court sentenced Dantignac to 25 years to life on each of the six counts, specifying only the term on count 6 as concurrent; the court also imposed two 10-year firearm enhancements (§ 12022.53, subd. (b)) and two five-year prior serious felony enhancements (§ 667, subd. (a)(1).) The total sentence was 125 years to life in prison plus 30 years.

DISCUSSION

I. Sufficiency of the Evidence at Priors Trial

Dantignac contends that the evidence was insufficient to establish that he was the person who had suffered previous convictions because the testimony of the fingerprint

specialist who linked Dantignac to the prior offenses did not establish his identity with respect to all prior offenses. We reject this argument.

The priors packet contained documents relating to three prior criminal proceedings: Dantignac's 1994 sentencing on 11 counts, 10 of which were robberies (Case No. BA073778); his December 1990 sentencing for a single count of robbery (Case No. BA027656); and his August 1990 sentencing for a narcotics offense (Case No. A962578).

Dantignac's identity was established through fingerprint comparisons and also on the basis of Dantignac's unusual name. The fingerprint expert testified that she had personally taken the fingerprints of Dantignac that day, and that she then compared those prints with the prints in the priors packet. She testified that the prints came from the same person. Dantignac elected not to cross-examine the fingerprint technician, and his counsel declined to argue that the evidence was insufficient. Instead, his counsel advised the court that he believed that between the evidence presented and the photograph included in the priors packet, he believed that the prosecution had met its burden of proof with respect to the priors allegations. The court concluded that "[w]ith an unusual name and with the fingerprint the evidence appears to be overwhelming that the man who is before me is the same man who is identified as Taurus Dantignac and having suffered a great number of prior convictions as reflected in this [section 969b] packet." Sufficient evidence supports this conclusion.

Dantignac argues that the fingerprint technician's evidence was insufficient to establish that he had suffered all of his prior convictions because the fingerprint technician did not adequately specify which of the fingerprint cards in the priors packet she used to compare the prints she had obtained that day. Instead, when the technician was asked whether she looked at the fingerprint cards in the priors packet, she said that she had initialed the pages that she compared with those she had personally taken from Dantignac. Dantignac points out that only one of the fingerprint cards in the priors packet bears any initials. Dantignac appears to believe that it is a fingerprint card relating to the instant case, but in fact it is a fingerprint card taken in conjunction with Case

No. BA073778, the case with the 10 robberies. Dantignac contends that the initials are illegible, but the first letter appears to be an "L," the first initial of the fingerprint technician. As the fingerprint technician testified that she concluded that the fingerprints matched with the initialed pages, and the fingerprint card associated with Case No. BA073778 bears what appear to be initials in the top right corner, the evidence establishes that the technician compared the prints she had taken with the fingerprint card from 10 of Dantignac's prior robbery convictions, and found that they matched. Dantignac has not demonstrated any insufficiency of the evidence with respect to his identity in connection with these 10 convictions.

The fingerprint card that is associated with the eleventh strike, from Case No. BA027656, does not show any visible initials, nor does the fingerprint card from the 1990 narcotics sentencing, Case No. A962578. However, the fingerprint evidence was not the only evidence on which the court determined that Dantignac was the same person that had suffered the prior convictions. The trial court also relied on Dantignac's unusual name, Taurus Dantignac. The identity of sufficiently unusual names is enough to support such a finding in the absence of countervailing evidence.[2] (*People v. Mendoza* (1986) 183 Cal.App.3d 390, 401; *People v. Brucker* (1983) 148 Cal.App.3d 230, 242; *People v. Sarnblad* (1972) 26 Cal.App.3d 801, 805-806.) No countervailing evidence was produced here. Moreover, the priors packet contained a November 2004 photograph of Dantignac that appears to have been taken upon a transfer in custody while he served his sentence for Case No. BA073778. The trial judge, who had the opportunity to view Dantignac during the trial, was well-situated to compare the person before him with the person photographed. (*Sarnblad*, at p. 806 [photographic evidence may be used to prove prior convictions].) Even aside from the fingerprint evidence, the evidence before the

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[2] Although the abstract of judgment for the 1994 sentencing lists his name as "Taurus Datignac," the fingerprint card associated with the sentencing on those 11 offenses lists two spellings of the name: "Taurus Dantignac" as the name, "Taurus Datignac" as an alias. The abstract of judgment and the fingerprint card for Case Nos. BA027656 and A962578 both refer to Taurus Dantignac.

trial court was sufficient to establish that Dantignac was the person who had suffered the prior convictions alleged in the information.

II. Admissibility of the Priors Packet

Dantignac argues that the priors packet offered at the court trial on his priors was inadmissible because its admission violated his right to confrontation under the Sixth Amendment to the United States Constitution, citing *Crawford v. Washington* (2004) 541 U.S. 36 (*Crawford*). Dantignac acknowledges that this issue has been resolved adversely to his position in *People v. Morris* (2008) 166 Cal.App.4th 363 (*Morris*) and *People v. Taulton* (2005) 129 Cal.App.4th 1218 (*Taulton*). We agree with the *Morris* and *Taulton* courts that documents such as those here fall outside *Crawford* "because they are 'prepared to document acts and events relating to convictions and imprisonments' [citation], and not for the primary purpose of providing evidence in a trial." (*Morris*, at p. 370.)

Dantignac argues that while *Morris* and *Taulton* stand for the proposition that the admission of individual rap sheets does not violate the Confrontation Clause, their compilation into a priors packet and certification by the prison custodian of records under section 969b creates an inadmissible document because the sole purpose of the compilation is the use of the packet in a criminal trial to prove the contents of the records therein. Dantignac appears to be unaware that the priors packet was at issue in *Taulton*, *supra*, 129 Cal.App.4th at page 1221. There, "[t]he only evidence presented at the bench trial consisted of documents constituting a so-called 969b packet," and the issue on appeal was whether the court's findings based on that evidence violated the defendant's confrontation rights. (*Ibid*.)

Moreover, this type of evidence has consistently been held admissible under the Confrontation Clause. Indeed, in the recent United States Supreme Court's opinion in *Melendez-Diaz v. Massachusetts* (Jun. 25, 2009, No. 07-591) 557 U.S. ___ [2009 Lexis 4734], the Supreme Court discussed clerk's certificates authenticating official records as

the one class of evidence that has traditionally been admissible even though it was prepared for use at trial.[3] The Supreme Court emphasized that the clerk's authority in this area is extremely narrow: the clerk may certify only the correctness of a copy of a record kept by the office, not to provide an interpretation of a record's content, substance, or effect. (2009 Lexis 4734, *30.) The court wrote, "A clerk could by affidavit *authenticate* or provide a copy of an otherwise admissible record, but could not do what the [laboratory drug] analysts did here: *create* a record for the sole purpose of providing evidence against a defendant." (2009 Lexis 4734, *30.) Here, the Department of Corrections employee who created the priors packet did not create any records for the sole purpose of providing evidence against Dantignac; he or she compiled a group of what Dantignac concedes are separately admissible documents, and then authenticated the group of records—exactly what the Supreme Court described as the limited certifying role of a clerk. Admission of the section 969b packet did not violate Dantignac's confrontation rights.

II. Refusal to Strike Strikes

Dantignac asserts that the trial court abused its discretion when it denied his motion to strike 10 of his prior convictions under section 1385 and *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 for the purposes of applying the Three Strikes Law. "[I]n ruling whether to strike or vacate a prior serious and/or violent felony conviction allegation or finding under the Three Strikes law, on its own motion, 'in furtherance of justice' pursuant to Penal Code section 1385(a), or in reviewing such a ruling, the court in question must consider 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

[3] The Supreme Court's decision was issued after the briefing in this matter was complete. Accordingly, we authorized the parties to submit letter briefs on the applicability of the decision to this matter.

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." (*People v. Williams* (1998) 17 Cal.4th 148, 161 (*Williams*).)

Dantignac argues that it was an abuse of discretion to refuse to strike a number of his strikes because the resulting sentence is grossly disproportionate to the crimes for which it was imposed. Dantignac's counsel describes him as "a garden[-]variety stick-up criminal, robbing individuals of their wallets, purses, watches and cash. No one was injured." Dantignac argues that the sentence shocks the conscience, and that it is inappropriate for a first-degree murderer to receive a sentence permitting parole in 20 years, while he, who mugged without causing injuries, received a sentence six times as long. He contends that his sentence is fundamentally unfair and unjust. We review rulings on motions to strike prior convictions for an abuse of discretion. (*Williams*, *supra*, 17 Cal.4th at p. 162.)

Although counsel downplays the numerosity of offenses and the danger involved in Dantignac's criminal history, the record demonstrates that Dantignac is a serial robber who engages in the dangerous practice of using firearms to accomplish his robberies. He has 11 prior robbery convictions, and, as the trial court noted, "Just here he comes out of prison and starts robbing people again." That Dantignac has not injured or killed anyone may be happenstance; it is not, however, a reason to discount the seriousness of and danger posed by his crimes. Dantignac simply did not offer the court any reason requiring it to exercise its discretion to strike any, let alone 10, of his prior strikes: he minimized his criminal history and argued that a sentence as long as he was subject to was necessarily cruel or unusual punishment. Other than to observe that he was 40 years old at the time of sentencing, Dantignac made no arguments to the trial court (or to this court) that would suggest that anything about Dantignac's background, character, and prospects would justify striking any of his prior strikes. Here, the trial court's comments indicate that it weighed the nature and circumstances of Dantignac's present felony and prior serious and/or violent felony convictions and the particulars of Dantignac's background, character, and prospects, and concluded that Dantignac was exactly the kind

of offender that the Three Strikes Law was intended to reach. The trial court did not abuse its discretion in refusing to strike 10 strikes. (*Williams*, *supra*, 17 Cal.4th at pp. 161-164.)

Dantignac also has not established that his punishment constitutes cruel or unusual punishment under the California Constitution. The California Constitution prohibits any sentence that is "so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity." (*In re Lynch* (1972) 8 Cal.3d 410, 424, fn. omitted.) The California Supreme Court has instructed that, when reviewing a claim of cruel or unusual punishment, courts should examine the nature of the offense and offender, compare the punishment with the penalty for more serious crimes in the same jurisdiction, and measure the punishment to the penalty for the same offense in different jurisdictions. (*People v. Dennis* (1998) 17 Cal.4th 468, 511; *In re Lynch*, at pp. 425-429.)

Regarding the nature of the offense and the offender, we evaluate the totality of the circumstances surrounding the commission of the current offense, including the defendant's motive, the manner of commission of the crime, the extent of the defendant's involvement, the consequences of his or her acts, and his or her individual culpability, including factors such as the defendant's age, prior criminality, personal characteristics, and state of mind. (*People v. Martinez* (1999) 71 Cal.App.4th 1502, 1510.) Here, Dantignac was wholly culpable for the series of robberies and other crimes for which he was prosecuted here. He acted alone and committed the crimes in a particularly dangerous manner. Moreover, there is nothing favorable to Dantignac when his prior criminality is considered. The probation reports in the record, of which we take judicial notice, indicate that the 40-year-old Dantignac had a decades-long record of criminal activity. At the age of 16, in 1982, he was placed on probation for robbery. In 1983, when Dantignac was 17 years old, a juvenile petition was sustained that alleged he was carrying a concealed weapon (§ 12025, subd. (b)). In 1985 he was convicted of taking a vehicle without consent (Veh. Code, § 10851). In 1986 he was convicted of burglary (§ 459) in May and then of battery (§ 243 subd. (a)) in August. In 1987 he was convicted

of possession of a dangerous weapon (§ 12020, subd. (a)). In 1988 he pleaded guilty to narcotics possession (Health & Saf., § 11350, subd. (a)). In 1990 he pleaded nolo contendere to battery (§ 242) in February and was convicted of robbery in December. As discussed above, he was convicted of 10 counts of robbery and one charge of sexual battery (§ 243.4) in 1994. He was convicted in 1994 of possessing a weapon or tear gas while in custody (§ 4574, subd. (a)). In the present proceedings, he was convicted of three more robberies, two of them committed with firearms; two acquisitions of access card information with the intent to defraud; and carjacking. Dantignac has demonstrated that he is a dangerous serial robber with an extensive criminal history.

Dantignac argues that his sentence, when compared to sentences imposed for more serious crimes, is excessive. States, however, may punish recidivists more harshly than non-recidivists without violating the prohibition on cruel or unusual punishment. (See, e.g., *Rummel v. Estelle* (1980) 445 U.S. 263, 278; *People v. Gray* (1998) 66 Cal.App.4th 973, 993; *People v. Cartwright* (1995) 39 Cal.App.4th 1123, 1136-1137.) Moreover, the fact that Dantignac's sentence for six felonies—three robberies, two committed with firearms; two acquisitions of access cards with the intent to defraud; and carjacking—is longer than the term that a person who commits one first degree murder must serve before being eligible for parole does not establish that his sentence is excessive. "Because the Legislature may constitutionally enact statutes imposing more severe punishment for habitual criminals, it is illogical to compare [appellant's] punishment for his 'offense,' which includes his recidivist behavior, to the punishment of others who have committed more serious crimes, but have not qualified as repeat felons. Other such offenders would likely receive similar or longer sentences under the new law if the law were applicable to them because of recidivist conduct." (*People v. Ayon* (1996) 46 Cal.App.4th 385, 400, fn. omitted, disapproved on another ground in *People v. Deloza* (1998) 18 Cal.4th 585, 600, fn. 10.) Dantignac has not shown that his sentence is greater

than that for more serious offenses in California, nor has he asserted that similar offenses in other states do not carry punishments as severe.[4]

In sum, Dantignac has not established that his sentence offends fundamental notions of human dignity or shocks the conscience. Accordingly, the sentence of 125 years to life plus 30 years is not cruel or unusual under the California Constitution, and Dantignac has not established any abuse of discretion in failing to strike 10 of his strikes on this basis.

DISPOSITION

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.

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[4] We acknowledge that some courts have concluded that the intercase proportionality review set forth in *In re Lynch*, *supra*, 8 Cal.3d at pages 427 through 429 is not required by the California Constitution. (See *People v. Weddle* (1991) 1 Cal.App.4th 1190, 1198, fn. 8.)