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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. GEORGE BENJAMIN LEWIS, Defendant and Appellant.	B218495 (Los Angeles County Super. Ct. No. BA337498)

APPEAL from the judgment of the Superior Court of Los Angeles County, Rand S. Rubin, Judge. Affirmed.

Marcia C. Levine, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Lance E. Winters and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

George Benjamin Lewis appeals from the judgment entered following his convictions by a jury of kidnapping to commit rape and assault with intent to commit rape. Lewis was sentenced under the "Three Strikes" law (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) to an aggregate state prison term of 30 years to life. Lewis's sole contention on appeal is the trial court erred in relying, in part, on his juvenile adjudication to determine his sentence. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

As Rosalina C. was walking to the bus stop, Lewis grabbed her arm and dragged her into some bushes across the street. They struggled and ended up on the ground. Lewis held Rosalina C. down and inserted his hand into her pants and under her bra. At some point, he choked her. A bystander alerted police.

A jury convicted Lewis of kidnapping to commit rape and assault with intent to commit rape. In a bifurcated proceeding the trial court found Lewis had two prior strikes—a juvenile adjudication for robbery and an adult conviction for attempted robbery—with the meaning of the Three Strikes law, had suffered one serious felony conviction under Penal Code section 667, subdivision (a)(1), and had served three separate prison terms for felonies (Pen. Code, § 667.5, subd. (b)).

Lewis was sentenced as a third strike offender to 25 years to life for kidnapping to commit rape, plus five years for the serious felony enhancement under Penal Code section 667, subdivision (a)(1). Sentencing on the count of assault to commit rape was stayed under Penal Code section 654. The court struck the three one-year prior prison term enhancements in the interests of justice. (Pen. Code, § 1385.)

DISCUSSION

Lewis argues use of his juvenile adjudication for robbery as a prior strike under the Three Strikes law violated his federal constitutional right to a jury trial. The Supreme Court in *People v. Nguyen* (2009) 46 Cal.4th 1007 rejected a similar constitutional

challenge to the use of a juvenile adjudication as a prior strike. (*Id*. at p. 1028 ["the absence of a constitutional or statutory right to jury trial under the juvenile law does not, under *Apprendi*, preclude the use of a prior juvenile adjudication of criminal misconduct to enhance the maximum sentence for a subsequent adult felony by the same person"].) Acknowledging we are obligated to follow *Nguyen*, Lewis asserts this claim solely to preserve it for future federal review.

DISPOSITION

The judgment is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.