

CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION TWO

People v. Dain

Dain · No. A168286 · Decided October 15, 2025

SUMMARY

The California Court of Appeal, First Appellate District, Division Two, reviews the prosecution’s appeal from an order dismissing Yacob Dain’s prior strike conviction and a five-year serious-felony enhancement. The court concludes that the trial court abused its discretion in dismissing the prior strike because it applied an incorrect understanding of the law, but holds that the proper remedy is remand for the trial court to reconsider the Romero motion. The court finds no abuse of discretion in dismissing the section 667(a) enhancement or imposing the middle term for the principal offense.

CASE DETAILS

COURT	California Court of Appeal, First Appellate District, Division Two
WRITING FOR THE COURT	Miller, J.; Stewart, P.J.; Richman, J.
JURISDICTION	California Court of Appeal, First Appellate District, Division Two
DECIDED	October 15, 2025
DOCKET	A168286
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The People appealed from the trial court's order granting Yacob Dain's Romero motion and dismissing a prior strike conviction, as well as dismissing a five-year serious-felony enhancement and imposing the middle term for the principal offense. The appeal was decided on remand from the California Supreme Court, which had rejected the prior appellate disposition directing reinstatement of the strike finding.
STANDARD OF REVIEW	A trial court's decision whether to dismiss a prior strike conviction under Penal Code section 1385(a) is reviewed for abuse of discretion. The standard is deferential, but reversal is warranted when the ruling falls outside the bounds of reason under the applicable law and relevant facts. The appellant bears the burden of clearly establishing that a sentencing decision was irrational or arbitrary.
PRECEDENTIAL VALUE	Published and certified for publication

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QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by dismissing Dain's prior strike conviction under Penal Code section 1385(a) based principally on the age of the conviction and perceived changes in sentencing policy.
2. Whether Penal Code section 1385(c), including the provision giving great weight to a prior conviction more than five years old, applies to dismissal of a prior strike conviction under the Three Strikes law.
3. Whether the trial court abused its discretion by dismissing the five-year serious-felony enhancement under Penal Code section 667(a).
4. Whether the trial court abused its discretion by imposing the middle term rather than the upper term for home-invasion robbery.

HOLDINGS

1. Penal Code section 1385(c) does not apply to a trial court's decision whether to dismiss a prior strike conviction under the Three Strikes law because the Three Strikes law is an alternative sentencing scheme, not a sentence enhancement.
2. The trial court abused its discretion by dismissing Dain's prior strike conviction because it relied principally on the conviction's remoteness and generalized changes in sentencing policy, without identifying circumstances showing that Dain fell outside the spirit of the Three Strikes law.
3. The proper remedy is to reverse the order dismissing the strike and remand for the trial court to decide the Romero motion in the first instance under the governing law and any admissible and relevant arguments and evidence.
4. The trial court did not abuse its discretion by dismissing the five-year enhancement under Penal Code section 667(a) based on the age of the prior conviction.
5. The trial court did not abuse its discretion by imposing the middle term for the principal offense of home-invasion robbery.

KEY QUOTATIONS

“Thus, under section 667(c)(3), the bare fact that a prior strike conviction is over five years old cannot be the basis for dismissing the strike.” (at 11-12)

“On this record, we see nothing about the nature and circumstances of the present felonies and the prior strike conviction or the particulars of defendant’s background, character, and prospects that suggests defendant could be deemed outside the spirit of the Three Strikes law.” (at 18)

“The trial court’s order striking the prior strike conviction is reversed and the matter is remanded for the trial court to decide the Romero motion in the first instance under the governing law and any argument and evidence the court may find admissible and relevant.” (at 22)

FACTUAL BACKGROUND

In October 2017, several armed intruders entered the Smith family's Santa Rosa home, restrained and threatened the occupants, struck Jess Smith with a firearm, and demanded access to a safe and marijuana. Police stopped Dain approximately one mile from the home and found property belonging to the victims, including jewelry and 14 one-pound bags of marijuana. Dain's criminal history included prior active-gang-participation convictions, parole and probation violations, additional misdemeanor and felony convictions, and continued criminal conduct after the 2006 conviction that was retried as a strike.

PROCEDURAL HISTORY

A jury convicted Dain in 2019 of home-invasion robbery and related offenses, and the trial court found two prior active-gang-participation convictions to be strikes and serious-felony convictions. In Dain I, the Court of Appeal reversed the prior-conviction findings and remanded for retrial and resentencing. On remand, the prosecution retried one prior conviction, the trial court found it qualified as a strike and serious felony, and the court granted Dain's Romero motion, dismissed the strike and section 667(a) enhancement, and imposed a middle-term sentence. The People appealed; the Court of Appeal initially directed reinstatement of the strike, but the Supreme Court reversed that disposition in Dain II and remanded for further proceedings. On the present remand, the Court of Appeal reversed the order dismissing the strike and remanded for the trial court to decide the Romero motion under the correct legal standards.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the order granting dismissal of the prior strike conviction and remand for the trial court to decide Dain's Romero motion in the first instance under the governing law and any arguments and evidence the court finds admissible and relevant.

CASES CITED

- People v. Dain (Dec. 21, 2021, A157756), 2021 WL 6031474
- People v. Dain (2024) 99 Cal.App.5th 399
- People v. Dain (2025) 18 Cal.5th 246
- People v. Superior Court (Romero) (1996) 13 Cal.4th 497

- People v. Strike (2020) 45 Cal.App.5th 143, 146, 150
- People v. Rodriguez (2012) 55 Cal.4th 1125
- People v. Henderson (2022) 14 Cal.5th 34, 43-44
- People v. Garcia (2018) 28 Cal.App.5th 961, 971
- People v. Anderson (2023) 88 Cal.App.5th 233, 238
- People v. Lipscomb (2022) 87 Cal.App.5th 9, 16
- People v. Burke (2023) 89 Cal.App.5th 237, 243-244
- People v. Olay (2023) 98 Cal.App.5th 60, 65-67
- Lopez v. Sony Electronics, Inc. (2018) 5 Cal.5th 627, 637
- People v. Strong (2001) 87 Cal.App.4th 328, 342
- People v. Codinha (2023) 92 Cal.App.5th 976, 984, 986-987
- Arnett v. Dal Cielo (1996) 14 Cal.4th 4, 19
- People v. Williams (1998) 17 Cal.4th 148, 161-164
- People v. Garcia (1999) 20 Cal.4th 490, 498, 503
- People v. Carmony (2004) 33 Cal.4th 367, 376-379
- People v. Salazar (2023) 15 Cal.5th 416, 428
- People v. Humphrey (1997) 58 Cal.App.4th 809, 813
- People v. Mayfield (2020) 50 Cal.App.5th 1096, 1107-1108