

SUPREME COURT
FILED

JUL 12 2023

Jorge Navarrete Clerk

S279476

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re CARLOS MARTINEZ on Habeas Corpus.

The petition for writ of habeas corpus is denied. (See *In re Robbins* (1998) 18 Cal.4th 770, 780 [courts will not entertain habeas corpus claims that are untimely]; *In re Clark* (1993) 5 Cal.4th 750, 767-769 [courts will not entertain habeas corpus claims that are successive].)

GUERRERO

Chief Justice

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F. Grab

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

199/2943
10-6-98

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS MARTINEZ,

Defendant and Appellant.

B114499

(Super. Ct. No. NA030592)

COURT OF APPEAL - SECOND DIST.

FILED

OCT - 5 1998

JOSEPH A. LANE Clerk
Deputy Clerk

APPEAL from a judgment of the Superior Court of Los Angeles County.
James B. Pierce, Judge. Affirmed.

Victoria H. Stafford, under appointment by the Court of Appeal, for
Defendant and Appellant.

Daniel E. Lungren, Attorney General, George Williamson, Chief Assistant
Attorney General, Carol Wendelin Pollack, Senior Assistant Attorney General, Robert
Katz, Supervising Deputy Attorney General, and Frederick Grab, Deputy Attorney
General, for Plaintiff and Respondent.

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Carlos Martinez appeals from the judgment entered following a jury trial resulting in his conviction for first degree burglary (Pen. Code, § 459), with court findings he had a prior serious felony conviction (Pen. Code, § 667, subd. (a)(1)), two "strikes" under the Three Strikes law (Pen. Code, §§ 667, subds. (b) to (i); 1170.12), and a prior felony conviction for which he had served a separate prison term (Pen. Code, § 667.5, subd. (b)). He contends his punishment is cruel and/or unusual.

FACTS

On November 8, 1996, when Harold Durnil and his wife were away for the weekend, appellant broke into their residence and took items of personal property.

In the information, appellant was charged with the Durnil burglary and three additional burglaries. The jury could not agree whether appellant committed the three additional burglaries. The court declared a mistrial, and the People eventually dismissed these charges. Appellant was convicted of the Durnil burglary.

At sentencing on the instant burglary, the court read and considered the probation report. The court listened to trial counsel's comments in support of dismissing "strikes" under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.¹ The court declined to grant appellant leniency since his criminal history was so aggravated. The court imposed

¹ Appellant had a 1983 misdemeanor conviction for receiving stolen property and three 1984 convictions for being under the influence and petty theft. In 1985, he was convicted of misdemeanor receiving stolen property. In 1986, he was convicted of giving false information to a police officer and being drunk in a public place. In 1987, he was convicted of petty theft, being under the influence and misdemeanor driving under the influence. In 1988, he was convicted twice of being under the influence and of burglary (case No. A039884). In 1989, he was twice convicted of being under the influence and his felony probation was revoked and he was committed to state prison for 16 months. He also was deported after a conviction for illegal entry to the United States. In 1992, he was convicted in case No. NA008309 of two counts of first degree burglary (the "strikes"). Appellant told the probation officer he is a polysubstance abuser, who most recently used phencyclidine and cocaine.

a 25-years-to-life term, enhanced by five years for a prior serious felony conviction and by one year for the prior prison term.

DISCUSSION

We reject the contention that appellant's punishment is cruel and/or unusual. Appellant entered an occupied residence to commit burglary. He was a serious recidivist with three prior felony convictions involving similar conduct and he has served a prior prison term. The courts consistently have rejected claims that life terms imposed on recidivists violate the ban on cruel and unusual punishment. (*Harmelin v. Michigan* (1991) 501 U.S. 957, 965; *Rummel v. Estelle* (1980) 445 U.S. 263, 284; *People v. Cooper* (1996) 43 Cal.App.4th 815, 820; *People v. Kinsey* (1995) 40 Cal.App.4th 1621, 1630-1631; *People v. Cartwright* (1995) 39 Cal.App.4th 1123, 1134-1137.) We decline to rule otherwise.

DISPOSITION

✓ The judgment is affirmed.²

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We concur:

WOODS, J.

JOHNSON, Acting P.J.

NEAL, J.

² This court has permitted appellant to file a supplemental brief. (See *People v. Clark* (1992) 3 Cal.4th 41, 173.) Therein he raised the following contentions: (1) the court improperly denied appellant's *Marsden* motions (*People v. Marsden* (1970) 2 Cal.3d 118); (2) the prosecution violated appellant's right to a fair trial with regard to discovery; (3) he was entitled to advisory counsel; (4) the court violated due process by refusing his request for a postponement to prepare his defense; (5) he was denied the use of the subpoena power of the court; (6) he was entitled to self-representation; (7) the court improperly admitted his confession into evidence; (8) trial counsel was constitutionally ineffective in that she did not make a motion to suppress illegally-seized evidence and did not challenge the use of his prior convictions. These contentions find no support in the record.