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Attorneys for Defendant
Robert Stanley Hrbac

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MENDOCINO

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

ROBERT STANLEY HRBAC,

Defendant.

Case No.: 23CR01086

SENTENCING MEMORANDUM, NOTICE
AND MOTION TO STRIKE PRIOR STRIKE
CONVICTION

People v. Superior Court (Romero)

Date: 4/4/24
Time: 9:00 a.m.
Dept.: A

TO THE DISTRICT ATTORNEY OF MENDOCINO COUNTY AND THE CLERK OF
THE ABOVE-MENTIONED COURT:

PLEASE TAKE NOTICE that on the above noted date and time or as soon thereafter as
the matter may be heard in the courtroom of the above-entitled court, ROBERT STANLEY
HRBAC will move for orders striking his prior strike conviction for purposes of sentencing,
granting the low term eight years, and dismiss the prior PC §288 conviction enhancement.

The motion will be based on this notice of motion, any attached declaration or
documents, the memorandum of points and authorities, and on any oral argument presented at
the hearing on this motion.

Dated: 3/4/24


Dana Liberatore,
Attorney for Robert Hrbac

INTRODUCTION

The defendant, Robert Hrbac, comes before the court for judgment and sentencing following a jury verdict of guilt on Count 1, a violation of PC §288.5, continuous sexual abuse of a minor, a finding of prior conviction under PC §288 enhancement under PC §667.51(a) / PC §667.6(a), a verdict of guilt on Count 2, a violation of PC §136.1(c)(2), witness dissuasion by conspiracy, and a finding of a single prior strike conviction. He faces up to forty-five years in state prison resulting from an upper term of sixteen years for the PC § 288.5 violation, with an additional four years from the PC§136.1(c)(2), doubled to forty years due to the strike prior, and increased by a further five years due to the prior enhancement. The court, after jury was waived for sentencing factors, determined the existence of the following circumstances in aggravation: the crimes involved acts disclosing a high degree of cruelty, viciousness or callousness, the victim was particularly vulnerable, Mr. Hrbac interfered with the judicial process, the crimes involved planning, Mr. Hrbac took advantage of a position of trust to commit the offenses, and Mr. Hrbac engaged in violent conduct that indicates a serious danger to society. This sentence would likely be served at 85% credits in state prison due the violent felony status of PC §288.5.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

At the jury trial conducted from February 6 through February 16, 2024, evidence was presented to the Court showing Mr. Hrbac molested his six-year-old daughter ten or so times over three years. None of molestations were violent or involved physical coercion. The details were unclear, but the molestations likely involved Mr. Hrbac touching of the victim's private parts with his fingers, Mr. Hrbac touching the victim's private parts with his private parts and possibly some penetration of the victim's private parts by Mr. Hrbac's private parts. There was no evidence of physical injury to the victim.

Further evidence was presented that Mr. Hrbac molested four other girls ranging from three to fifteen years old at the time, seventeen to twenty-eight years ago. He was convicted of

1 PC §288 in 2006 for molesting one of those girls. During trial, Mr. Hrbac testified he was
2 molested as a child by his uncle, and this influenced his later mollestive behavior.

3 4 **II.**

5 **MR. HRBAC'S BACKGROUND**

6 Mr. Hrbac was born on 11/05/1978 and is 44 years old. He was molested by his uncle,
7 who forceable orally copulated him several times when Mr. Hrbac was five to six years old.

8 Mr. Hrbac's sole prior conviction was for a violation of PC §288, suffered on January 31,
9 2006, over seventeen years ago.

10 11 **III.**

12 **PRIOR STRIKE OFFENSES**

13 Mr. Hrbac suffered his only strike conviction for a violation PC §288 on January 31,
14 2006.

15 **IV.**

16 **THE COURT HAS THE DESCRETION TO STRIKE THE PRIOR STRIKE**

17 California Penal Code §1385(1) provides, in pertinent part, "that the Judge or magistrate
18 may, either on his or her own motion or upon the application of the prosecuting attorney, and in
19 furtherance of justice, order that an action be dismissed."

20 The Court's dismissal of an alleged prior under the three strikes law, in furtherance of
21 justice under Penal Code §1385, may occur even though the prosecution objects, and may occur
22 "before, during or after trial, up to the time Judgment is pronounced." *People v. Superior Court*
23 (*Romero*), 13 Cal. 4th 497, 524 (1996).

24 Three seminal Supreme Court cases outline the scope of discretion to dismiss or vacate
25 priors alleged under the three strikes law.¹ These decisions demonstrate the high degree of
26 deference that the appellant court gives to a trial court's determination of whether dismissal of

27
28 ¹ *People v. Superior Court (Romero)*, 13 Cal.4th 497(1996), *People v. Williams*, 17 Cal.4th
148(1998), and *People v. Garcia*, 20 Cal.4th 490 (1999)

1 such priors is warranted.

2 In *People v. Superior Court (Romero)*, 13 Cal. 4th 497 (1996), the California Supreme
3 Court held that it is an abuse of discretion for a Judge to dismiss a strike “solely to accommodate
4 judicial convenience or because of court congestion”, or to dismiss “simply because a Defendant
5 pleads guilty,” or to dismiss “guided solely by a personal antipathy for the effect that the three
6 strikes law would have on a defendant.”

7 The *Romero* Court emphasized that dismissals under Penal Code §1385 are improper
8 unless the Judge considers “the Defendant’s background, the nature of his present offenses, and
9 other individualized considerations.”

10 In *People v. Williams*, 17 Cal. 4th 148, 161 (1998) the Court noted that the “furtherance
11 of justice” inquiry begins with consideration of the nature and circumstances of the present
12 felony and prior serious and/or violent felonies, and observed:

13 The court in question must consider whether, in light of the nature of his present
14 felonies and prior serious and/or prior felony convictions, and the particulars of his
background, character, and prospects, the Defendant may be deemed outside the
[three strikes laws] spirit . . .

15 The *Williams* Court concluded that dismissing a “strike” prior and sentencing the
16 Defendant to nine years in prison, rather than twenty-five years to life, was an abuse of
17 discretion. The court found that there was nothing favorable or mitigating about the Defendant’s
18 current offense of felony drunk driving with multiple priors, and nothing favorable about his
19 priors for attempted robbery and a rape. The Supreme Court reviewed the Defendant’s
20 background, character and prospects, and failed to find anything favorable, as the Defendant had
21 committed four burglaries as a juvenile, and four felonies and eight misdemeanors as an adult, as
22 well as countless probation and parole violations. The *Williams* court particularly noted that
23 though the Defendant’s last strike conviction was 13 years old, his overall record since that time
24 betrayed that he had not “changed from the time of his prior offenses,” had committed numerous
25 offenses in the meanwhile, including one felony involving actual violence, and was thus
26 undeserving of leniency. *Williams*, 17 Cal. 4th at 163-165.

1 **THE COURT SHOULD STRIKE MR. HRBAC'S PRIOR STRIKE**

2 Mr. Hrbac should be deemed outside the spirit of the three strikes scheme. His prior
3 strike conviction is from 2006, over seventeen years ago. He spent less than a year in custody
4 after that conviction. He remained free in the community for over a decade and a half with no
5 further criminal behavior other than that involved in the current case. All the prior victims who
6 testified in this case described conduct that happened a year or more before Mr. Hrbac's 2006
7 conviction.

8 In the present case Mr. Hrbac's actions are not without mitigating circumstances. He was
9 molested as child by an uncle, distorting his sexual inclinations and his sense of how to express
10 love and affection. He did not use violence to molest his daughter, instead relying on
11 manipulation and his position as her father. His daughter was not physically injured by the
12 molestation.

13 The three strikes scheme is designed to target and remove from society the irredeemably
14 criminal, the permanently broken and dangerously dysfunctional. Mr. Hrbac is a profoundly
15 damaged man, twisted by his own experience of being molested as a child by a family member.
16 But he is not irreparable. It is possible with the lengthy prison term he will serve, even without
17 the strike prior, therapy and other treatment he can overcome his divergent sexual impulses and
18 become a normal and safe member of society, as he was for fourteen years. This possibility, and
19 his fourteen or so years free from criminal behavior, justify striking his prior strike conviction.

20
21 **THE COURT SHOULD IMPOSE THE LOW TERM BECAUSE MR. HRBAC IS A**
22 **VICTIM OF CHILDHOOD SEXUAL ABUSE**

23 At the beginning of 2022 SB 567 took affect modifying PC § 1170(b)(6). "[n]ot
24 withstanding paragraph (1), and unless the court finds that the aggravating circumstances
25 outweigh the mitigating circumstances that imposition of the lower term if any of the following
26 was a contributing factor in the commission of the offense: (A) The person has experienced
27 psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect,
28 exploitation, or sexual violence. *PC § 1170(b)(6)(A).*

1 Here, when Mr. Hrbac was five to six years old, he was sexually molested by his
2 maternal uncle. It is well documented that childhood victims of molestation often go on to
3 molest others in their adulthood. Mr. Hrbac's traumatic childhood experience, being molested
4 by a trusted family member, clearly had an impact on his life, leading him to commit similar
5 crimes against children. To sentence Mr. Hrbac to more than the low term requires the court to
6 find that the aggravating circumstances outweigh the mitigating circumstances, and that it is in
7 the interests of justice to do so.

8 The mitigating circumstances in this case outweigh the aggravating circumstances. Mr.
9 Hrbac did not injure the victim, nor did he use force or physical coercion to accomplish the
10 molestations. Likewise, he did not use force or violence, merely manipulation, to dissuade the
11 victim from reporting the molestations to law enforcement.

12 Based on the above factors the court should impose the combined low term of eight
13 years.

14
15 **THE COURT SHOULD DISMISS THE PRIOR PC §288 CONVICTION**

16 **ENHANCEMENT**

17 "Notwithstanding any other law, the court shall dismiss an enhancement if it is in the
18 furtherance of justice to do so, except if dismissal of that enhancement is prohibited by any
19 initiative statute. *PC § 1385(c)(1)*. In exercising its discretion under this subdivision, the Court
20 shall consider and afford great weight to evidence offered by the defendant to prove that any of
21 the mitigating circumstances in subparagraphs (A) to (I) are present. Proof of the presence of
22 one or more of these circumstances weighs greatly in favor of dismissing the enhancement,
23 unless the court finds that dismissal of the enhancement would result in physical injury or other
24 serious danger to others. *PC § 1385(c)(2)*. The current offense is connected to prior
25 victimization or childhood trauma. *PC § 1385(c)(2)(E)*.

26 Here, Mr. Hrbac was molested when he was five or six years old by his uncle. It is well
27 known that victims of childhood sexual abuse often go on to commit similar crimes as an adult.
28 The prior victimization makes them predisposed to sexually assault children. The court should

1 dismiss the prior PC §288 conviction enhancement.

2 V.

3 **CONCLUSION**

4 The defense requests the court strike the prior strike conviction, dismiss the prior PC
5 §288 enhancement, and grant Mr. Hrbac the low term of eight years.

6
7
8 Dated: 3/4/24

9 
Dana Liberatore,
for Robert Hrbac

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17 **DECLARATION OF DANA LIBERATORE**

18
19 I, Dana Liberatore:

20 1. Have personal knowledge of the facts set forth below, and if called to testify I
21 could and would competently testify to each of them.

22 2. Am an attorney duly licensed to practice law before the courts of this State, and I
23 am a deputy public defender for the County of Mendocino. The Public Defender's Office is
24 counsel of record for Mr. Hrbac in this matter, and it is in that capacity that I make this
25 declaration. I am the attorney assigned to this matter.

26 3. Have reviewed Mr. Hrbac's "RAP sheet," and have represented his entire record
27 to the best of my knowledge based upon that document.
28

4. Have discussed with Mr. Hrbac facts about his upbringing, his family, and his molestation as child, and have permission to discuss such information with the court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct on _____.


Dana Liberatore

PROOF OF SERVICE

I declare that:

I am employed in the County of Mendocino, State of California. I am over the age of 18 years and not a party to the within entitled cause. My business is Office of the Mendocino County Public Defender, 175 So. School Street, Ukiah, California 95482, my business fax number is (707)463-5435, and my electronic service address is pd_support@mendocinocounty.org

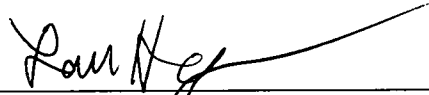
On March 5, 2024 I electronically served the attached:

SENTENCING MEMORANDUM; NOTICE AND MOTION TO STRIKE PRIOR STRIKE CONVICTION (*Romero*)

I electronically served the document on the following parties at the listed electronic service address:

Mendocino County Probation
probationefsad@mendocinocounty.org

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on March 5, 2024 at Ukiah, California.



Laura Hegenbart

PROOF OF SERVICE

I declare that:

I am employed in the County of Mendocino, State of California. I am over the age of 18 years and not a party to the within entitled cause. My business is Office of the Mendocino County Public Defender, 175 So. School Street, Ukiah, California 95482, and my business fax number is (707)463-5435.

On March 5, 2024 I served the attached :

SENTENCING MEMORANDUM; NOTICE AND MOTION TO STRIKE PRIOR STRIKE CONVICTION (*Romero*)

On the following parties by hand delivery to:

District Attorney's Office
100 N State St room 10
Ukiah, CA 95482

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on March 5, 2024 at Ukiah, California.


Erika Alcazar