

# 3 STRIKES – AND I SHOULDN'T BE OUT!

## **THESIS**

The Three Strikes Law is an extreme law that needs to be modified. It first became effective in 1994 as a means for alternative sentencing with increased punishments for repeat offenders.

### **I. INTRODUCTION**

The initial position of the Three Strikes Law was to deter repeat offenders from committing more crimes, by giving harsher sentences. From the time when the law first passed it appeared to deter some repeat offenders. LA County Sheriff block said there was an enormous decrease in the number of reported crimes during the early months of 1994 as opposed to the same time in 1993. Also during the same time the attorney general noted there was a significant decrease in the violent crimes dropping by 7.8 percent and property crimes were down 7.6 percent.<sup>1</sup>

By the law being so new it seemed to make the repeat offenders rethink their crimes, especially ones where they knew their previous crimes could be used to strike them out. The fear of getting 25 years for stealing a \$5.00 item was a deterrent.

Since the law was passed more and more repeat offenders were sentenced to harsher sentences, although some appeared excessive. Crimes were given more and more weight, sometimes where the sentence should have been modified and restructured it was not. For this reason I feel the Three Strikes Law needs to be modified.

The law as it was intended and written has changed over the years and this has caused in my opinion, individuals to get more time than they deserved. I agree that all criminals who commit crimes should be punished. I also believe the repeat offenders should have some type of punishment for the crimes they commit, and it should not be excessive for the crime.

### **SCOPE**

My paper will discuss the Three Strikes Law, its inception, the inconsistency of the law and cases to support it and cases to show that it can and should be modified.

### **II. THE FOUNDATION OF THREE STRIKES LAW**

#### **A. The Three Strikes Law was enacted in 1994**

It is said the first “Three Strikes” was enacted in 1993 in Washington State as Initiative 593.<sup>2</sup> The Three Strikes Law was put on the ballot in 1994. The law came on the ballot because Sharon and Mike Reynolds lost their daughter in 1992. She was leaving a restaurant with her

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<sup>1</sup> Three Strikes and You're Out...a promise to Kimber by Mike Reynolds & Jones, Quill Driver Books/Word Dancer Press, Inc. 1996 ISBN 1-884956-12-2

<sup>2</sup> ([http://en.wikipedia.org/wiki/Three\\_strikes\\_law](http://en.wikipedia.org/wiki/Three_strikes_law)).

friend when she was killed by two men who should have been in jail.<sup>3</sup> It was passed as Proposition 184. This law touched on everyone's emotions and that is one of the reasons it passed. It was also because a little girl named Polly Klauss was abducted and taken from her home while her friends watched.<sup>4</sup>

The Three Strikes Law was formed in 1994 by the legislature (Stats 1994, Ch. 12, effective March 12, 1994) and was started as a "sentencing scheme" to punish repeat offenders for any violent crimes they did prior to their present crimes. The court has a method they use to determine if the prior case constitutes as a strike.<sup>5</sup> (California Criminal Law Procedure and Practice 2007) "All prior serious or violent felony convictions can be charged as a strike. When an individual who has at least one prior conviction of a crime defined as a "violent felony" in Pen Code §667.5(c) or as "serious felony" in Pen. Code §1192.7(c) is charged with any new felony offense, the prior conviction or convictions can be alleged as a strike under the Three Strikes Law."<sup>6</sup>

### 1. The basis of the Law

This law has two separate "sentencing Schemes". First one being if a defendant has committed crimes in which he has two strikes ("All violent and serious felony convictions can be charged as strikes") Criminal Law Procedure and Practice 2007, Ruddy and Yuenger, he can be sentenced to 25 years to life if he commits another crime. This is one of the issues I have, no matter what the third offense is, a defendant can be struck out. The second part to this law is if a defendant has a single offense crime and then commits another crime which carries a double sentence he can be sentenced to a term of 25 years to life for his second offense.

The reason I feel this law is so disproportionate is because it is unfair to sentence someone to 25 years when a crime is committed that is not violent, yet still a crime. The Judge has the discretion and authority to structure the sentence. The prosecutor can agree to offer a lesser sentence or even a modified sentence in certain cases.

The courts use the Penal Codes to follow sentencing guidelines as well when they are giving out sentences to all criminal offenders. Under Penal Code Section 667(b) it states:

"It is the intent of the Legislature in enacting subdivisions (b) to (i), inclusive, to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of serious and/or violent offenses. "

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<sup>3</sup> Three Strikes and You're Out...a promise to Kimber by Mike Reynolds & Jones, Quill Driver Books/Word Dancer Press, Inc. 1996 ISBN 1-884956-12-2.

<sup>4</sup> Three Strikes and You're Out...a promise to Kimber by Mike Reynolds & Jones, Quill Driver Books/Word Dancer Press, Inc. 1996 ISBN 1-884956-12-2.

<sup>5</sup> California Criminal Law Procedure and Practice 2007, Ruddy Yuenger, Continuing Education of the Bar California

<sup>6</sup> California Criminal Law Procedure and Practice, 2007 Ruddy Yuenger, Continuing Education of the Bar California

## Unfair Cases

In the case of *Ewing V. California (01-6978) 538 U. S. 11 (2003)*<sup>7</sup> the defendant was convicted in the District court of grand theft in the amount \$900.00 for stealing 3 golf clubs. He was sentenced to 25 years to life for this small crime (yet still a crime) because it was found that he had prior more serious and violent crimes on his record. Many times when a crime is committed and the person has a previous strike, the attorney always tries to see if there is any way they can get the strike removed or get the district attorney (DA) to agree to a plea that does not include a strike.<sup>8</sup> The Judge has the authority to agree to strike a previous strike. Under Penal Code Section 1385(a) it states:

*“The Judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in the furtherance of justice, order an action to be dismissed. The reasons for the dismissal must be set forth in an order entered upon the minutes. No dismissal shall be made for any cause which would be ground of demurrer to the accusatory pleading.*

The defendant appealed to the higher court stating it was a violation of the Eight Amendment and the punishment was cruel and unusual. The court denied the appeal and felt the sentence was justified and therefore affirmed the lower court’s decision.

In furtherance of understanding the court stated:

“ (b) State legislatures enacting three strikes laws made a deliberate policy choice that individuals who have repeatedly engaged in serious or violent criminal behavior, and whose conduct has not been deterred by more conventional punishment approaches, must be isolated from society to protect the public safety. Though these laws are relatively new, this Court has a longstanding tradition of deferring to state legislatures in making and implementing such important policy decisions. The Constitution “does not mandate adoption of any one penological theory,” *id.*, at 999, and nothing in the [Eighth Amendment](#) prohibits California from choosing to incapacitate criminals who have already been convicted of at least one serious or violent crime. Recidivism has long been recognized as a legitimate basis for increased punishment and is a serious public safety concern in California and the Nation. Any criticism of the law is appropriately directed at the legislature, which is primarily responsible for making the policy choices underlying any criminal sentencing scheme. Pp. 11—15.”

I feel this was unfair. The sentence does not justify the crime. To me even though he has all this stacked against him the courts have the ability to give a lessor sentence in order to make the underlying sentence be less. In this case the courts chose to send him to prison and not lower his offense to a misdemeanor. This should not have occurred because clearly it states the court has the authority to strike a strike and give a lessor sentence. Although his felony was grand theft in the amount of \$900.00, it was not appropriate to give that type of sentence.

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<sup>7</sup> *Ewing V. California (01-6978) 538 U. S. 11 (2003)*

<sup>8</sup> Christopher Darden, (interview 9/15/2012)

In another case *In re Coley (2010) 87 Cal. App.4<sup>th</sup> 138* the defendant was given a 25 year to life sentence for failing to update his registration for being a sex offender. When you are released as a sex offender the parole terms are clear and there are certain rules you must follow. Defendant failed to register within 5 days of birthday. He was violated and given the harsh sentence. Granted defendants crimes were of a serious nature, the District Attorney had the authority to revise the sentence and not give the defendant the sentence. This is where I feel the system fails. He could have been offered a structured sentence, and did the terms for the violation, saving him years off his sentence. He appealed on the grounds of cruel and unusual punishment in violation of the Eighth Amendment and it was denied.

This is another case that should have been positioned and defendant should have been given lessor time. The Judge has the discretion to restructure a sentence and to dismiss a strike, and give a lessor sentence offer to the defendant and his counsel.<sup>9</sup>

In the case of *Rummel v. Estelle, 455 U.S. 263 (1980)* the lower court sentenced defendant to a term of 25 years for a petty theft and the Supreme court upheld their decision holding the sentence does not constitute cruel and unusual punishment. Defendant appealed on the basis that the crime was disproportionate to the crime. I agree. Defendant had two prior felonies in the State of Texas. The first offense was for fraudulent use of a credit card in the amount of \$80.00; the second offense was for using a forged check in the amount of \$28.36. The last offense which the court felt justified his third strike was for getting \$120.75 under false pretenses. After his third offense, the court sentenced him to 25 years.

Here is a another case I fell the defendant should have been given less time. Because all offenses were under \$400 (which is the maximum is \$401.00 for a felony) I feel the prior offenses and this one should have been categorized as misdemeanors.

As I stated earlier the Judge or magistrate has the discretion in sentencing a defendant. I feel they did not use the process correctly.

#### D. JUSTIFIED THREE STRIKE CASE

In the case of *People v. Scott Fuhrman, 16 Cal.4<sup>th</sup> 930(1997),* the defendant committed a bank robbery with a weapon (which added an enhancement) and he took a vehicle. The jury found him guilty on all charges. Before committing this crime defendant had committed other serious crimes and had two previous strikes and two prior prison terms. Because of his previous crimes the court took all of that into consideration when given him his sentence under the Three Strikes Law. The court gave his sentence as follows:

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<sup>9</sup> Penal Code Section 1385 Authority of Courts to Dismiss Strikes, California Three Strikes Sentencing, Chp. 10 (The Rutter Group Criminal Practice Series) By Judge J. Richard Couzens (Ret.), Presiding Justice Tricia A. Bigelow

“On count 1 (the current robbery offense), the court imposed a sentence of twenty-five years to life and a consecutive one-year term for the weapon-use enhancement; on count 2 (the vehicle-taking offense), the court imposed a sentence of twenty-five years to life and a consecutive seven-year term (a five-year term under section 667, subd. (a), for the prior serious felony, and two 1-year terms for the two prior prison terms). The court imposed the sentence on count 2 consecutive to the sentence on count 1, resulting in a total prison term of 58 years to life.”

In this case the Three Strikes sentence was justified. He was a serious repeat offender and continued to commit crimes. This is why the law was written, not for frivolous petty crimes, (yet still crimes.) as being the cause for striking you out.

In the case of *People v. Davis, 46 Cal. 4th 539 - Cal: Supreme Court 2009*, Defendant was found guilty on numerous charges. This is the case that involved the minor, Polly Klass. The defendant robbed the home, kidnapped the 12 year old girl, attempted lewd acts, and murdered her. He was also found guilty of double counts of false imprisonment, assault with a deadly weapon and robbery on the friends in Polly's home. It was uncovered that defendant had been in prison numerous time for serious violent charges. In this case defendant was sentenced to death. In the Supreme Court case referenced above the defendant appealed to the court on the grounds that he was not given a fair trial, although the motion was granted changing venues, he felt it wasn't far enough. The defendant also claimed there was an error made during jury selection. The defendant in this claimed many other inconsistencies in his case, but the court felt the lower courts did not error and the sentence given the defendant was justified.

The case was only brought up on appeal, because by law a defendant is entitled and it is mandatory in criminal cases. The Supreme Court affirmed the lower courts decisions and defendant previous sentence stood.

In this case, I felt the decision made by all courts was reasonable and justified. The Three Strikes law in this case being applied when defendant first started his life of crime, could have had him incarcerated already.

### **Conclusion**

I choose this topic because of the unfairness I felt it presented and because there is an overwhelming number of inmates incarcerated under the Three Strikes Law. The law is not always fair, but it feels justified.

The Three Strikes Law is an extreme law that needs to be modified. As you can see from the cases I presented to show the disproportion of the sentencing scheme, it needs to be modified.

I still feel all crimes deserved to be punished, but I also believe the sentence should justify the crime.

I have a great ending to this research paper. In November of 2012, Proposition 36 passed and made changes to the current Three Strikes Law. The changes to Proposition 36 are as follows:

*“Proposition 36:*

- *Revises the three strikes law to impose life sentence only when the new felony conviction is "serious or violent".*
- *Authorizes re-sentencing for offenders currently serving life sentences if their third strike conviction was not serious or violent and if the judge determines that the re-sentence does not pose unreasonable risk to public safety.*
- *Continues to impose a life sentence penalty if the third strike conviction was for "certain non-serious, non-violent sex or drug offenses or involved firearm possession".*
- *Maintains the life sentence penalty for felons with "non-serious, non-violent third strike if prior convictions were for rape, murder, or child molestation."*

There will be a lot of cases coming into the courts now, as there are over 8,000 inmates sentenced under the 1994 law. I see this as a great thing. Hopefully the inmates that deserve to be resentenced will have an opportunity to reform their lives.

### **Websites**

[http://ballotpedia.org/wiki/index.php/California Proposition 36, Changes in the %22Three Strikes%22\\_Law\\_%282012%29](http://ballotpedia.org/wiki/index.php/California_Proposition_36_Changes_in_the_%22Three_Strikes%22_Law_%282012%29)

<http://ccj.sagepub.com/content/24/4/345.abstract>

<http://www.law.cornell.edu/supct/html/01-6978.ZS.html>

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=445&invol=263>

[http://scholar.google.com/scholar\\_case?case=1122892135440141395&q=People+v.+Fuhrman&hl=en&as\\_sdt=2,5](http://scholar.google.com/scholar_case?case=1122892135440141395&q=People+v.+Fuhrman&hl=en&as_sdt=2,5)

<http://supreme.justia.com/cases/federal/us/445/263/case.html>

[http://scholar.google.com/scholar\\_case?case=7062573886598357960&q=People+v.+Davis,+46+Cal.+4th+539+-+Cal:+Supreme+Court+2009&hl=en&as\\_sdt=2,5](http://scholar.google.com/scholar_case?case=7062573886598357960&q=People+v.+Davis,+46+Cal.+4th+539+-+Cal:+Supreme+Court+2009&hl=en&as_sdt=2,5)

### **Endnotes**

1. *California Criminal Law Procedure and Practice* 2007
2. *California Three Strikes Sentencing* (The Rutter Group Criminal Practice Series)

By Judge J. Richard Couzens (Ret.), Presiding Justice Tricia A. Bigelow

3. [www.lao.ca.gov/2005/3\\_strikes/3\\_strikes\\_102005.htm](http://www.lao.ca.gov/2005/3_strikes/3_strikes_102005.htm)

### **Cases**

Ewing v. California (01-6978) 538 U. S. 11 (2003)

In re Coley (2010) 87 Cal. App.4<sup>th</sup> 138

People v. Scott Fuhrman, 16 Cal.4<sup>th</sup> 930(1997)

People v. Davis, 46 Cal. 4th 539 - Cal: Supreme Court 2009

Rummel v. Estelle, 445 U.S. 263 (1980)

### **Codes**

Penal Code Section 1385(a)

Penal Code Section 667(b)