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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL K. CHESTANG,

Defendant and Appellant.

A132688

(Solano County  
Super. Ct. No. FCR277967)

Defendant Daniel K. Chestang appeals from a judgment entered upon a jury verdict finding him guilty of one count of possession of a controlled substance in a state prison. His court-appointed counsel has filed a brief requesting our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 to determine whether there are any arguable grounds for appeal. Chestang has not filed a supplemental brief. We conclude there are no issues that warrant review, and affirm.

**FACTUAL BACKGROUND**

Chestang is a prisoner at the California State Prison, Solano. One morning on his way to his work assignment, Chestang was stopped by an officer and pat searched for possible contraband. The officer noticed a possible foreign object in the right sleeve of Chestang's jacket. Upon closer inspection, the officer found a small latex package concealed in the jacket sleeve. Chestang said the package contained tobacco, a contraband substance in state prison. When the officer examined the contents of the package, he discovered three smaller packages. One of them contained a green leafy substance, another a tar-like substance and a third appeared to contain tobacco. Further

searching revealed a package of suspected marijuana that was produced from Chestang's mouth, and another package of green leafy material that Chestang retrieved from the area of his buttocks. Chestang was put on contraband surveillance watch and later that day passed from his rectum two more packages. One contained an apparent controlled substance, and the other a \$50 bill.

Laboratory testing of the items retrieved from Chestang confirmed usable amounts of marijuana and heroin.

### **PROCEDURAL BACKGROUND**

Chestang was charged with one felony count of possession of a controlled substance within a state prison as proscribed by Penal Code section 4573.6. An enhancement was alleged due to Chestang's prior commission of a violent felony, but it was dismissed at the beginning of trial on the prosecution's motion.

Chestang moved to dismiss the information on the grounds that the items seized from him were possibly contaminated when they were field tested by correctional officials without his consent. The court properly denied the motion, and the issue of possible contamination was explored by Chestang's counsel with witnesses during trial.

The case was tried to a jury over two days. During deliberations the jury had three requests. After the court consulted with counsel, the jurors were directed to the instructions for an answer to their question regarding what is meant by a usable amount of controlled substances. They were told that it was for them to determine whether one or all of the packages had a usable amount of a controlled substance. And, in answer to their last question, testimony of a witness was read back to them.

Chestang was found guilty as charged. He was sentenced to the mid-term of three years to run consecutively to his current term of 60 years to life for first degree murder.

### **DISCUSSION**

Counsel has represented that he advised Chestang of his intention to file a *Wende* brief in this case and of Chestang's right to submit supplemental written argument on his own behalf. Chestang has not done so. Chestang has also been advised of his right to

request that counsel be relieved. This court has reviewed the entire record on appeal. No issue requires further briefing.

**DISPOSITION**

The judgment is affirmed.

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Siggins, J.

We concur:

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McGuinness, P.J.

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Pollak, J.