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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

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THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
JOSE VINCENT RUBAL,  
  
Defendant and Appellant.

C067562  
  
(Super. Ct. No.  
6288013A)

Defendant Jose Vincent Rubal pleaded no contest to transportation of a controlled substance (Health & Saf. Code, § 11352, subd. (a)), solicitation to commit a crime (Pen. Code, § 653f, subd. (a)), admitted two prior strike convictions (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), and three prior prison terms (Pen. Code, § 667.5, subd. (b)). According to the factual basis provided at the time of his plea, defendant transported hydrocodone and solicited an individual to commit perjury. He had prior convictions for residential

burglary (Pen. Code, § 459) and assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)), and served terms in prison for these offenses in addition to a third prison term. In exchange for his plea, it was agreed the remaining charges and enhancements would be dismissed with a *Harvey*<sup>1</sup> waiver and that defendant could pursue a request to dismiss his strike convictions pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. Pursuant to defendant's request, the trial court dismissed one strike with respect to his conviction for transportation of a controlled substance but declined to dismiss either strike as to the other offense. The court sentenced defendant to a term of 25 years to life plus 11 years in state prison.

Defendant appealed.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief setting forth the facts of the case and, pursuant to *People v. Wende* (1979) 25 Cal.3d 436, requested the court to review the record and determine whether there are any arguable issues on appeal. Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

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<sup>1</sup> Under *People v. Harvey* (1979) 25 Cal.3d 754, 758-759, a trial court may not consider charges that have been dismissed as part of a plea agreement for purposes of sentencing unless those charges are transactionally related to the offenses which the defendant admitted or there is a "contrary agreement."

We have undertaken an independent examination of the entire record and have found no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

\_\_\_\_\_ HULL \_\_\_\_\_, Acting P. J.

We concur:

\_\_\_\_\_ MAURO \_\_\_\_\_, J.

\_\_\_\_\_ HOCH \_\_\_\_\_, J.