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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD DALE AUSTIN, JR.,

Defendant and Appellant.

D060191

(Super. Ct. No. SCE306785)

APPEAL from a judgment of the Superior Court of San Diego County, Peter C.

Deddeh, Judge. Affirmed.

I.

INTRODUCTION

Richard Dale Austin, Jr., pled guilty to one count of possession of a controlled substance/paraphernalia by a jail inmate (Pen. Code, § 4573.6)<sup>1</sup> (count 1), and admitted having suffered a strike prior (§ 667, subs. (b)-(i)). The trial court sentenced Austin to a

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<sup>1</sup> Unless otherwise specified, all subsequent statutory references are to the Penal Code.

stipulated four-year term, comprised of the lower term of two years, doubled due to the strike prior. We affirm.

## II.

### FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>

#### A. *Factual background*

On the morning of November 15, 2010, San Diego County Sheriff's Deputy Aaron Hoxie, who was working at the San Diego Central Jail, was assigned to transport Austin, an inmate, to the Vista Detention Facility. In preparation for the transport, Deputy Hoxie conducted a search of Austin. In the course of the search, Deputy Hoxie discovered a syringe concealed in the waistband of Austin's pants.

#### B. *Procedural background*

On January 13, 2011, the People filed an information charging Austin with one count of possession of a controlled substance/paraphernalia by a jail inmate (§ 4573.6) (count 1). The information alleged that the offense was committed while Austin was released on bail, within the meaning of section 12022.1, subdivision (b).<sup>3</sup> The information further alleged that Austin had suffered two probation denial priors (§ 1203,

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<sup>2</sup> In light of Austin's plea of guilty, there was no trial in this case. The parties stipulated to use of the transcript of the preliminary hearing as the factual basis for Austin's guilty plea. We therefore rely on the facts as set forth in the transcript of the preliminary hearing.

<sup>3</sup> Austin's counsel moved to dismiss this allegation at the preliminary hearing, since Austin was in custody, and thus, clearly was not on bail, at the time of the offense charged in count 1. The court declined to make a finding at that time. The allegation was subsequently dismissed.

subd. (e)(4)), two prison priors (§ 667.5, subd. (b)) and one strike prior (§ 667, subds. (b)-(i)).

On May 3, 2011, Austin pled guilty to count 1 and admitted having suffered a strike prior. In exchange for his guilty plea, the People agreed to dismiss the remaining charges, and also agreed to dismiss a separate criminal case that was pending against Austin (case No. SCE 304902). The parties stipulated to a four-year sentence. On May 17, 2011, the trial court sentenced Austin to four years in prison. The trial court denied Austin's request for a certificate of probable cause.

### III.

#### DISCUSSION

##### A. *A review of the record discloses no error*

Appointed appellate counsel has filed a brief summarizing the facts and proceedings below. Counsel presents no argument for reversal, but asks this court to review the record for error, as mandated by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Counsel has not identified any issues pursuant to *Anders v. California* (1967) 386 U.S. 738.

On December 12, 2011, this court granted Austin's request for a 45-day extension to file a supplemental brief. Austin has not filed a brief on appeal.

A review of the record pursuant to *Wende, supra*, 25 Cal.3d 436 has disclosed no reasonably arguable appellate issues. Austin has been competently represented by counsel on this appeal.

IV.  
DISPOSITION

The judgment is affirmed.

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AARON, J.

WE CONCUR:

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HUFFMAN, Acting P. J.

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McINTYRE, J.