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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN EDWARD VARGAS,

Defendant and Appellant.

E054036

(Super.Ct.No. SWF1101242)

OPINION

APPEAL from the Superior Court of Riverside County. Angel M. Bermudez,
Judge. Affirmed.

Raymond M. DiGuiseppe, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

On May 18, 2011, a felony complaint charged defendant and appellant Steven Edward Vargas with unlawful possession of ammunition under Penal Code¹ former section 12316, subdivision (b)(1)² (count 1); and street terrorism under section 186.22, subdivision (a) (count 2). The complaint alleged that defendant had suffered three prison prior offenses, under section 667.5, subdivision (b). One of the three prison prior offenses, a conviction for street terrorism, qualified as a serious and violent felony conviction under sections 186.22, subdivision (a), 667, subdivisions (a), (c) & (e)(1), and 1170.12, subdivision (c)(1).

On May 25, 2011, defendant entered a plea of guilty to counts 1 and 2, and admitted the prior strike offense. The trial court pronounced judgment the same day. The court sentenced defendant to two years eight months on count 1 (the low term of 16 months doubled under the three strikes law); and to the same term on count 2, stayed under Penal Code section 654. The court awarded defendant 15 days of presentence custody credit under Penal Code section 4019, imposed a \$30 criminal assessment fee under Government Code 70373, a \$40 court security fee under Penal Code section 1465.8, subdivision (a)(1), and a \$200 restitution fine under Penal Code section 1202.4,

¹ All statutory references are to the Penal Code unless otherwise specified.

² Former section 12316, subdivision (b)(1) was repealed and reenacted as section 30305, effective January 1, 2011, operative January 1, 2012.

subdivision (b) along with a suspended parole revocation fine of the same amount under Penal Code section 1202.45, subdivision (b).

On June 29, 2011, defendant filed a motion to withdraw his guilty plea; the trial court denied the motion. Defendant then filed a notice of appeal on July 8, 2011, challenging the validity of the plea, as well as the sentence or other matters not affecting the plea's validity, based on ineffective assistance of counsel. The trial court granted defendant's request for a certificate of probable cause.

STATEMENT OF FACTS

The parties stipulated to the descriptions of the charges in the complaint as the factual basis for the plea.

On May 15, 2011, defendant violated Penal Code former section 12316, subdivision (b)(1) in that he owned, possessed and had under his custody and control ammunition and reloaded ammunition although he was prohibited from owning and possessing a firearm under Penal Code former sections 12021,³ and 12021.1,⁴ and Welfare and Institutions Code sections 8100 and 8103.

On May 15, 2011, defendant violated section 186.22, subdivision (a) in that he "willfully and unlawfully actively participate[d] in a criminal street gang with knowledge

³ Former section 12021 was repealed and reenacted as sections 29800 through 29875, effective January 1, 2011, operative January 1, 2012.

⁴ Former section 12021.1 was repealed and reenacted as sections 29900 through 29905, effective January 1, 2011, operative January 1, 2012.

that its members engaged in and have engaged in a pattern of criminal gang activity, and willfully promoted, furthered and assisted in any felonious criminal conduct by members of that gang[.]’

On August 9, 2006, defendant was convicted of the crime of possession of controlled substances under Health and Safety Code section 11377, subdivision (a); he then served a term in state prison for said offense; and he did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during a period of five years subsequent to the conclusion of said term under Penal Code section 667.5, subdivision (b).

On April 20, 2005, defendant was convicted of the crime of criminal street gang activity under section 186.22, subdivision (a); he then served a term in state prison for said offense; and he did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during a period of five years subsequent to the conclusion of said term under section 667.5, subdivision (b). This conviction was deemed a serious felony under section 667, subdivision (a); and a serious and violent felony under sections 667, subdivisions (c) and (e)(1), and 1170.12, subdivision (c)(1).

On December 8, 2003, defendant was convicted of spousal abuse under section 273.5; he then served a term in state prison for said offense; and he did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during a period of five years subsequent to the conclusion of said term under section 667.5, subdivision (b).

ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed briefs under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief in both cases, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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/s/ McKinster
J.

We concur:

/s/ Hollenhorst
Acting P.J.
/s/ Miller
J.