

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE ART GUERRERO,

Defendant and Appellant.

E054787

(Super.Ct.Nos. RIF1100166 &
RIF1100289)

OPINION

APPEAL from the Superior Court of Riverside County. Michael B. Donner,
Judge. Affirmed.

John N. Aquilina, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

On January 26, 2011, a felony complaint filed in Riverside County charged
defendant and appellant Jose Art Guerrero with three counts of second degree burglary

under Penal Code¹ section 459 (counts 1–3). The complaint also alleged that defendant suffered a felony prison conviction within the meaning of section 667.5, subdivision (b), for violating section 459. The complaint further alleged that defendant suffered a serious and violent felony, in violation of section 245, subdivision (a)(2), within the meaning of sections 667, subdivisions (c) and (e)(1), and 1170.12, subdivision (c)(1).

On February 3, 2011, a separate felony complaint filed in Riverside County, charged defendant with second degree burglary under section 459 (count 1), and grand theft under section 487, subdivision (a) (count 2). The complaint also alleged that defendant suffered felony prison convictions within the meaning of section 667.5, subdivision (b), for violating sections 459 and 245, subdivision (a)(2). The complaint further alleged that defendant suffered a serious and violent felony, in violation of section 245, subdivision (a)(2), within the meaning of sections 667, subdivisions (c) and (e)(1), and 1170.12, subdivision (c)(1).

On May 3, 2011, following separate preliminary hearings, defendant was charged with the same offenses and enhancements in two separate informations. The People moved to consolidate the cases, which the court granted. On July 20, 2011, an amended information was filed consolidating the two cases. The amended information charged defendant with three counts of burglary under section 459 (counts 1, 2 & 4); attempted burglary under sections 664 and 459 (count 3); and grand theft under section 487,

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

subdivision (a) (count 5). The amended information also alleged that defendant suffered felony prison convictions within the meaning of section 667.5, subdivision (b), for violating sections 459 and 245, subdivision (a)(2). The amended information further alleged that defendant suffered a serious and violent felony, in violation of section 245, subdivision (a)(2), within the meaning of sections 667, subdivisions (c) and (e)(1), and 1170.12, subdivision (c)(1).

On July 22, 2011, pursuant to a plea agreement, defendant pled guilty one count of second degree burglary under section 459 (count 1), and entered admissions to each of the prior convictions alleged within the meaning of sections 667.5, subdivision (b), and 667, subdivisions (c) and (e)(1). The parties agreed to a sentence of the midterm of two years for the burglary offense, doubled as a result of the prior section 667 strike offense, and two years for each of the prior felony prison terms, to be served consecutively. The parties also agreed that defendant would be resentenced to a consecutive prison sentence for another state sentence he was currently serving in San Bernardino.² In exchange, the People agreed to dismiss the remaining counts.

On September 2, 2011, pursuant to the terms of the plea agreement, the court sentenced defendant as follows: midterm of two years for the burglary offense, doubled

² On February 1, 2011, defendant was convicted of second degree burglary under section 459, with true findings for two separate felony prison prior convictions within the meaning of section 667.5, subdivision (b), in San Bernardino County Superior Court, case No. FWV1002983. Defendant was sentenced to the upper term of three years for the burglary count, and one year for each of the prior felony prison convictions, for an aggregate state prison sentence of five years.

as a result of the prior strike offense, and two years for each of the prior prison terms— for an aggregate sentence of six years in state prison. The court then resentenced defendant in San Bernardino Superior Court case No. FWV1002983 to one-third the midterm, or eight months in prison, to be served consecutively.

Thereafter, the trial court awarded custody credits, and ordered that defendant pay fees and fines.

On October 20, 2011, defendant filed a timely notice of appeal.

STATEMENT OF FACTS³

On August 2, November 1, and November 16, 2010, two forced-entry burglaries occurred at a single T-Mobile store and one at a Verizon store, both of which were located on Limonite Avenue in Rubidoux, California.

From each burglary location, Riverside County Sheriff Investigator Andre Benson obtained and reviewed video surveillance tape recordings; they depicted the same persons breaking into, and stealing items from, the closed stores. According to Investigator Benson, officers with the Upland Police Department had previously identified one of the suspects when the officers investigated similar burglaries in their city.

With the information from the Upland Police Department, Investigator Benson went to defendant's residence. There, he interviewed defendant's girlfriend, Olga Rios, and her sister Sylvia Rios. During these interviews, they both identified defendant as one

³ The facts are taken from the testimony presented at the preliminary hearings because defendant pled guilty prior to trial.

of the suspects in the surveillance photographs. Olga Rios stated that defendant had admitted his involvement in the burglaries.

Investigator Benson conducted investigations of a series of burglaries of cell phone stores in Moreno Valley, California, which had occurred in the fall of 2010. During this investigation, he obtained surveillance photographs from the stores; they depicted defendant as a suspect in each of the burglaries. Thereafter, Olga and Sylvia Rios also identified defendant as being shown in the surveillance photographs of a forced-entry burglary occurring on September 16, 2010, at a T-Mobile store on Eucalyptus Avenue in Moreno Valley.

ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief 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, 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.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MCKINSTER
J.

We concur:

RAMIREZ
P.J.

RICHLI
J.