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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiffs and Respondents,

v.

MARTIN MUNOZ ZAMORA,

Defendant and Appellant.

E055203

(Super.Ct.No. SWF1101941)

**OPINION**

APPEAL from the Superior Court of Riverside County. W. Charles Morgan, Judge. (Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Meldie Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant was caught with over four kilograms of cocaine concealed in his vehicle. A jury convicted defendant of transporting cocaine (Health & Saf. Code,

§ 11352, subd. (a)) and a special weight enhancement that he possessed over four kilograms of cocaine (Health & Saf. Code, § 11370.4, subd. (a)(2)).

Defendant was sentenced to the midterm of four years for the transportation of cocaine. He was sentenced to an additional five years for the weight enhancement. He was ordered to serve the nine years in the Riverside County jail.

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 [87 S.Ct. 1396, 18 L.Ed.2d 493], setting forth a statement of the case, a summary of the facts, and potential arguable issues and requesting this court undertake a review of the entire record.

We find no errors and affirm the judgment.

## I

### FACTUAL BACKGROUND

On July 26, 2011, United States Border Patrol Agents Andrew Bolton and Paul Castillo were sitting in a marked patrol unit on the side of northbound Interstate 15 near the 76 freeway onramp. It was common for drug smugglers from Mexico to use this route to transport drugs into Los Angeles.

About 12:40 p.m., defendant drove by their unit. Defendant exhibited signs common for someone who was engaged in transporting drugs, including decelerating upon seeing the marked unit, avoiding eye contact with the agents, and swerving his vehicle. The agents followed defendant. Another border patrol agent was able to obtain

records that showed that the same vehicle had crossed the Mexican/United States border earlier that morning and had been driven by a much younger person. That information was relayed to Agents Bolton and Castillo. Changing drivers was a common tactic used in drug-smuggling operations.

The agents initiated a stop of defendant's vehicle. Defendant was directed to a checkpoint station. He appeared nervous and claimed he was lost. He said to Agent Castillo that he was responsible for everything in the vehicle. A K-9 unit was called.

A special compartment was found inside the vehicle's engine. Once border patrol officers drilled into the compartment, they found six bundles of cocaine. The six bundles were weighed at the scene and totaled 12 and one-half pounds.

Vien Zhivago was a forensic chemist employed by the Drug Enforcement Agency (DEA). Zhivago tested all six bundles found in defendant's vehicle and determined they all were cocaine. He removed all of the packaging in order to obtain a net weight of the cocaine. The net weight was 4.962 kilograms.

Defendant testified that he crossed the border in order to take a bus to San Fernando Valley to see a chiropractor. He ran into a friend at a restaurant who sold him the vehicle he was driving that day. Defendant and his friend agreed that defendant would bring the vehicle back that night or the next day. He knew nothing about the cocaine in the vehicle.

## II

### DISCUSSION

Defendant proposed two issues for our independent review in his opening brief as follows: (1) whether there was sufficient evidence presented to sustain the jury's conviction of the weight enhancement pursuant to Health and Safety Code section 11370.4, and (2) whether the trial court abused its discretion by sentencing him to nine years in county jail.

Initially, sufficient evidence supported the weight enhancement. Health and Safety Code section 11370.4 provides for an additional five-year sentence if the substance possessed exceeds four kilograms. The jury was instructed that they must find beyond a reasonable doubt that the cocaine seized weighed more than four kilograms. The DEA's chemist testified that the net weight of the cocaine was 4.962 kilograms and that he tested all six bundles of cocaine. Uncontradicted expert testimony providing the weight of the cocaine as being over four kilograms is sufficient to support the allegation. (*People v. Peneda* (1995) 32 Cal.App.4th 1022, 1031.)

We have reviewed the sentencing proceedings and the trial court properly exercised its discretion in sentencing defendant to nine years in county jail. (*People v. Avalos* (1996) 47 Cal.App.4th 1569, 1582-1583 [mid-term sentence based on "great quantity of drugs" is appropriate despite other mitigating factors].)

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

independently reviewed the record for potential error. We have now completed our independent review of the record and find no arguable issues.

II

DISPOSITION

The judgment is affirmed.

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RICHLI  
J.

We concur:

McKINSTER  
Acting P. J.

CODRINGTON  
J.