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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.

HECTOR MANUEL RODRIGUEZ,

Defendant and Appellant.

E056323

(Super.Ct.No. FVI1102351)

OPINION

APPEAL from the Superior Court of San Bernardino County. Lorenzo R.

Balderrama, Judge. Affirmed.

Richard Jay Moller, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

**INTRODUCTION**

On February 14, 2012, an information charged defendant and appellant Hector Manuel Rodriguez with driving under the influence under Vehicle Code section 23152,

subdivision (a) (count 1); and driving while having 0.08 percent or more of alcohol in the blood under Vehicle Code section 23152, subdivision (b) (count 2). The information also alleged that defendant had suffered a prior conviction under Vehicle Code sections 23550 and 23550.5. The information further alleged that (1) defendant had suffered two prison priors under Penal Code section 667.5, subdivision (b); and (2) a strike prior under Penal Code sections 667, subdivisions (b) through (i), and 1170.12, subdivisions (a) through (d).

On February 21, 2012, defendant filed a demurrer to the information. He contended that the out-of-state prior failed to meet the requirements under Vehicle Code sections 23550 or 23550.5. On March 8, 2012, defendant filed a motion to dismiss under Penal Code section 995, arguing, among other things, that the out-of-state prior failed to meet the requirements of Vehicle Code sections 23550 or 23550.5. On March 14, 2012, the prosecutor filed oppositions to both motions. On March 16, 2012, the court denied both motions.

Thereafter, on March 23, 2012, defendant pled guilty to driving under the influence and admitted the strike prior, in exchange for a four-year (midterm of two years, doubled) prison term.

On May 5, 2012, the trial court sentenced defendant to the agreed-upon term of four years.<sup>1</sup> The court imposed a \$240 restitution fine under Penal Code section 1202.4;

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<sup>1</sup> Although the court minutes and abstract of judgment indicate that the court sentenced defendant to the low term of four years, the reporter's transcript accurately states that defendant was sentenced "to the mitigated term of two years . . . doubled by  
*[footnote continued on next page]*

a \$240 parole revocation fine, stayed pending successful completion of parole, under Penal Code section 1202.45; and a court security fee under Penal Code section 1465.8, subdivision (a)(1) and a criminal assessment fine under Government Code section 70373, totaling \$70. The court then awarded defendant 215 actual days and 215 days of conduct credit, for a total of 430 days.

On May 23, 2012, defendant filed a timely notice of appeal based on the sentence or other matters that occurred after the plea, and seeking review of the denial of his Penal Code section 995 motion to dismiss the enhancement under Vehicle Code section 23550.5, subdivision (b). The trial court granted a certificate of probable cause.

### **STATEMENT OF FACTS<sup>2</sup>**

On October 9, 2011, about 9:56 p.m., Officer Scott LaFond found defendant passed out in his truck, which was running and stopped at the curb of a drive-thru Mexican restaurant in Hesperia. Defendant said that he had been drinking at a strip club, which was about four or five miles away. Officer LaFond believed that defendant was under the influence. A blood test revealed an alcohol level of 0.267.

Based on a Kansas plea agreement and convictions for second degree murder and hit and run involving the same victim, and a DUI, all on the same day, the trial court

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*[footnote continued from previous page]*

the admission of the prior strike for a total of four years[.]" pursuant to the terms of the plea agreement.

<sup>2</sup> The facts are taken from the transcript of the preliminary hearing, which formed the factual basis for the plea.

found that defendant had been convicted on an equivalent of Penal Code section 191.5, vehicular manslaughter.

### 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, but no 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 potential issues were raised.

### DISPOSITION

The judgment is affirmed.

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MCKINSTER  
Acting P. J.

We concur:

KING  
J.

CODRINGTON  
J.