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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. RICARDO CRUZ QUINTANA, Defendant and Appellant.	E056605 (Super.Ct.No. FVI1102237) OPINION

APPEAL from the Superior Court of San Bernardino County. Lorenzo R. Balderrama and Lynn M. Poncin, Judges. Affirmed.

Leslie A. Rose, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Pursuant to a plea agreement, defendant and appellant Ricardo Cruz Quintana pled no contest to possession of methamphetamine for sale (Health & Saf. Code, § 11378) for the benefit of, at the direction of, or in association with a criminal street gang (Pen. Code, § 186.22, subd. (b)(1)(A)). He also admitted that he had suffered one prior strike

conviction. (Pen. Code, §§ 667, subd. (b)-(i), 1170.12, subds. (a)-(d).) In return, the remaining allegations were dismissed, and defendant was sentenced to the stipulated term of 32 months in state prison with credit for time served. Defendant appeals from the judgment, challenging the validity of the plea or admission. We find no error and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On or about September 22, 2011, defendant and a codefendant possessed methamphetamine for the purpose of sale and for the benefit of, at the direction of, or in association with a criminal street gang.

On September 26, 2011, a nine-count felony complaint was filed against defendant and his codefendant. Defendant was charged with resisting a peace officer (Pen. Code, § 69, count 1); possession of methamphetamine for the purpose of sale (Health & Saf. Code, § 11378, count 3); transportation of a controlled substance (Health & Saf. Code, § 11379, subd. (a), count 4); carrying a loaded firearm by a gang member (Pen. Code, § 12031, subd. (a)(2)(C), count 5); possession of a controlled substance with a firearm (Health & Saf. Code, § 11370.1, subd. (a), count 6); possession of a firearm by a felon with priors (Pen. Code, § 12021, subd. (a)(1), count 7); possession of ammunition (Pen. Code, § 12316, subd. (b)(1), count 8); and active participation in a criminal street gang (Pen. Code, § 186.22, subd. (a), count 9). The complaint also alleged that defendant committed counts 1, 3, 4, 6, 7, and 8 for the benefit of, at the direction of, or in association with a criminal street gang with the specific intent to promote, further, or assist in criminal conduct by gang members. (Pen. Code, § 186.22, subd. (b)(1)(A).) The

complaint further alleged that defendant had suffered one prior strike conviction (Pen. Code, §§ 667, subd. (b)-(i), 1170.12, subd. (a)-(d)); two prior serious felony convictions (Pen. Code, § 667, subd. (a)(1)); and had served five prior prison terms (Pen. Code, § 667.5, subd. (b)).

On January 4, 2012, pursuant to a plea agreement, defendant pled no contest to count 3 and admitted the gang enhancement allegation attached to that count. He also admitted that he had suffered one prior strike conviction. In return, defendant was promised a stipulated 32-month sentence and the dismissal of the remaining allegations. The trial court found that defendant understood the nature of the charges and the consequences and punishments of the offenses he was pleading to; that the plea was entered into freely and voluntarily; and that defendant knowingly and intelligently waived his rights. Sentencing was thereafter continued.

At the March 16, 2012, sentencing hearing, defendant indicated that he wished to withdraw his plea. The trial court then conducted a hearing pursuant to *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*). Following the hearing, the trial court granted the *Marsden* motion and appointed another attorney to represent defendant in his motion to withdraw the plea.

On or about April 4, 2012, defendant filed his motion to withdraw his plea, claiming that he had pled in duress, and that his attorney had failed to inform him that admitting the gang enhancement allegation would constitute a new strike. The People subsequently filed their opposition.

A hearing on defendant's motion to withdraw his plea was held on June 11, 2012. Following testimony from defendant and counsel who had represented defendant at the time of the plea, the trial court denied defendant's motion. Defendant was thereafter sentenced in accordance with his plea agreement and awarded credit for time served.

On June 13, 2012, defendant sent a letter to the trial court stating that he was entitled to additional credits under amended Penal Code section 4019. The trial court denied defendant's request, noting that it had conferred with the deputy district attorney and defense counsel, and that they all had agreed that defendant was entitled to credits pursuant to former Penal Code section 4019 because defendant had pled to a strike where the date of the offense was September 22, 2011.

On June 21, 2012, defendant filed a notice of appeal challenging the validity of the plea and a request for certificate of probable cause. The trial court granted the request for certificate of probable cause on June 25, 2012.

II

DISCUSSION

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 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

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

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

KING
J.

MILLER
J.