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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

SAUL DELATORRE SALAZAR, JR.,

Defendant and Appellant.

F063464

(Super. Ct. No. BF132119A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Michael G. Bush, Judge.

Carol Foster, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Cornell, Acting P.J., Poochigian, J., and Franson, J.

Appellant, Saul Delatorre Salazar, Jr., pled no contest to being a felon in possession of a firearm (Pen. Code, § 12021, subd. (a)(1))¹ and admitted a prior prison term enhancement (§ 667.5, subd. (b)). Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), we affirm.

FACTUAL AND PROCEDURAL HISTORY

On April 21, 2010, at approximately 11:15 p.m., Highway Patrol Officer Phillip Kasinger and his partner were on patrol traveling westbound on Highway 58 in Kern County when they saw Salazar's vehicle with its hazard lights on stopped on the shoulder at an exit. After stopping, Officer Kasinger contacted Salazar as Salazar stepped out of his vehicle through the driver's door. Kasinger smelled alcohol on Salazar's breath and decided to conduct a driving under the influence (DUI) investigation. Kasinger placed Salazar in the back of the patrol car in order to drive Salazar's vehicle to a safe location. Upon entering Salazar's car, Kasinger smelled an odor of marijuana inside. After driving the vehicle to a safer location, Kasinger searched the passenger compartment while his partner completed the DUI investigation. In the glove compartment Kasinger found a box containing .38-caliber ammunition. Under the bench seat Kasinger found a Marlin rifle with the butt sticking out from under the seat. The rifle had an expended round in the chamber and four live rounds in the ignition to the lever action.

After Kasinger's partner completed the DUI investigation, Kasinger attempted to ask Salazar some questions, but he ran away. Salazar was arrested on April 23, 2010.

On August 10, 2010, the district attorney filed an information charging Salazar with possession of a firearm by a felon (count 1), possession of ammunition by a felon (§ 12316, subd. (b)(1)), possession of a concealable firearm in a vehicle (§ 12025, subd. (a)(1)), and resisting arrest (§ 148, subd. (a)(1)). The information also charged

¹ All further statutory references are to the Penal Code.

Salazar with a prior prison term enhancement and alleged that he had a prior conviction within the meaning of the three strikes law (§ 667, subd. (b)-(i)).

On March 4, 2011, defense counsel filed a suppression motion.

On July 11, 2011, the court denied Salazar's suppression motion.

On July 22, 2011, Salazar pled no contest with a *Cruz*² waiver to the possession of a firearm by a felon charge and admitted the prior prison term enhancement in exchange for the dismissal of the remaining counts.³ The *Cruz* waiver provided that Salazar would be released from custody until he was sentenced on September 22, 2012. If he returned on that date and had not committed any new felonies or misdemeanors, the court would strike the prior prison term enhancement and sentence him to the middle term of two years on his felon in possession of a firearm offense. If he did not return on that date or he committed any new misdemeanor or felony offense, the court would sentence him to an aggregate four-year term, the aggravated term of three years on the substantive offense and a one-year prior prison term enhancement.

In August 2011, Salazar was arrested for and pled to one count of misdemeanor petty theft, thereby violating the terms of his plea bargain.

On September 22, 2011, the court sentenced Salazar to an aggregate four-year term, the aggravated term of three years on his possession of a firearm by a felon conviction and a one-year prior prison term enhancement.

Salazar's appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the

² *People v. Cruz* (1988) 44 Cal.3d 1247.

³ The three strikes allegation was dismissed because the prosecutor determined that the underlying conviction did not qualify as a strike.

record. (*Wende, supra*, 25 Cal.3d 436.) Salazar has not responded to this court's invitation to submit additional briefing.

Following an independent review of the record we find that no reasonably arguable factual or legal issues exist.

DISPOSITION

The judgment is affirmed.