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

THE PEOPLE,

Plaintiff and Respondent,

v.

EDGARDO C. SANDIEGO,

Defendant and Appellant.

F064113

(Super. Ct. No. CRF36557)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tuolumne County. William G. Polley, Judge.†

Deborah Prucha, 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 Wiseman, Acting P.J., Kane, J., and Poochigian, J.

† Retired Judge of the Tuolumne Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

It was alleged in a criminal complaint that appellant, Edgardo C. Sandiego, possessed marijuana in prison (Pen. Code, § 4573.6)¹ and that he had suffered two “strikes.”² Pursuant to a plea agreement, appellant pled guilty to the substantive offense and admitted one strike allegation. The court imposed a prison sentence of four years, consisting of the two-year lower term on the substantive offense, doubled pursuant to the three strikes law (§§ 667, subd. (e)(1); 1170.12, subd. (c)(1)). The court also imposed a restitution fine of \$800 under the version of section 1202.4, subdivision (b) in effect at the time of appellant’s sentencing in 2011, and a “parole revocation restitution fine” (§ 1202.45).³ The court stayed the latter fine pending successful completion of parole.

Appellant’s appointed appellate counsel has filed an opening brief which summarizes the pertinent facts, with citations to the record, raises no issues, and asks that this court independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) Appellant, apparently in response to this court’s invitation to submit additional briefing, has submitted a letter in which, as best we can determine, he (1) claims he is not guilty of the instant offense, and (2) challenges the imposition of the restitution fines on the ground that he is not employed and lacks the ability to pay them. We affirm.

FACTS

The report of the probation office indicates the following: On February 22, 2011, officers with the Investigative Services Unit and Sierra Conservation Center (SCC), acting on the receipt of “confidential information” that appellant “was involved with drug

¹ All statutory references are to the Penal Code.

² We use the term “strike” as a synonym for “prior felony conviction” within the meaning of the “three strikes” law (§§ 667, subds. (b)-(i); 1170.12), i.e., a prior felony conviction or juvenile adjudication that subjects a defendant to the increased punishment specified in the three strikes law.

³ We refer to these two fines collectively as the restitution fines.

trafficking and had marijuana in his possession,” went to appellant’s cell at SCC where, upon the officers’ arrival, appellant “abruptly turn[ed] around and place[d] an unknown item into a shower bag.” The officers found, inside the shower bag, three packages containing what was later determined to be three grams of marijuana. Appellant admitted to possessing the marijuana.

DISCUSSION

Appellant’s claim that he is not guilty of the instant offense is foreclosed by his guilty plea. (*People v. Jones* (1995) 10 Cal.4th 1102, 1109, disapproved on another point in *In re Chavez* (2003) 30 Cal.4th 643, 656 [consideration of issues regarding guilt and innocence foreclosed by plea of guilty].)

Appellant did not argue below that he lacked the ability to pay the restitution fines. Therefore, his challenge to the restitution fines on that basis is forfeited. (*People v. Gamache* (2010) 48 Cal.4th 347, 409.)

Following independent review of the record, we have concluded that no reasonably arguable legal or factual issues exist.

DISPOSITION

The judgment is affirmed.