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

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN JEFFREY MILLER,

Defendant and Appellant.

F065495

(Super. Ct. No. 11CM2309)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. Steven D. Barnes, Judge.

Tracy A. Rogers, 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., Kane, J., and Franson, J.

It was charged by information that appellant, Jonathan Jeffrey Miller, committed two counts of vehicular manslaughter (Pen. Code, § 191.5, subd. (a)) and individual counts of driving under the influence causing bodily injury (Veh. Code, § 23153, subd. (a)) and driving with a blood alcohol level of .08 or above (Veh. Code, § 23153, subd. (b)). It was further alleged in the information that appellant had suffered a “strike”¹ and that he had served a prison term for a prior felony conviction (Pen. Code, § 667.5, subd. (b)).

Pursuant to a plea agreement, appellant pleaded no contest to one count of vehicular manslaughter and admitted the “strike” allegation, and the court granted the prosecution motion to dismiss the remaining counts and the prior prison term enhancement allegation. Appellant agreed the court could consider the dismissed counts in determining sentence. Thereafter, the court denied appellant’s request that the court dismiss his strike—a 2006 conviction of assault with intent to commit sodomy (Pen. Code, § 220)—pursuant to Penal Code section 1385, and imposed a prison term of 20 years, consisting of the 10-year upper term on the substantive offense, doubled pursuant to the three strikes law (Pen. Code, §§ 667, subd. (e)(1); 1170.12, subd. (c)(1)).

Insofar as the record reveals, appellant did not request, and the court did not issue, a certificate of probable cause (Pen. Code, § 1237.5).

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.)

¹ We use the term “strike” as a synonym for “prior felony conviction” within the meaning of the “three strikes” law (Pen. Code, §§ 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.

Appellant has not responded to this court's invitation to submit additional briefing. We affirm.

FACTS²

On July 15, 2011, California Highway Patrol Officer Adam Barresi, responding to a report of a vehicle collision, arrived at the scene of the accident where he found a white car, overturned and resting on its roof. The car had sustained extensive damage.

Firefighting personnel extracted four persons from the car: appellant, who was the driver; the right rear passenger, who was pronounced dead at the scene; the left rear passenger, who was taken to a hospital and died less than two hours later; and Mickle Perryman, the right front passenger.

Perryman told an investigating officer that appellant "made several steering inputs from the left to the right causing [the vehicle] to travel off the road and overturn."

Less than two hours after receiving the call regarding the accident, Officer Barresi made contact with appellant at the hospital where appellant had been taken. Appellant smelled strongly of an alcoholic beverage and he admitted drinking alcoholic beverages. A blood test revealed that appellant had a blood alcohol content of .08 percent.

DISCUSSION

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

DISPOSITION

The judgment is affirmed.

² Our factual statement is taken from the report of the probation officer.