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

THE PEOPLE,

Plaintiff and Respondent,

v.

CHENG PAO HER,

Defendant and Appellant.

F065564

(Super. Ct. No. VCF259911)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Gerald F. Sevier, Judge.

J. Edward Jones, 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 Poochigian, J.

A jury convicted appellant, Cheng Pao Her, of evading a peace officer (count 1/Veh. Code, § 2800.2, subd. (a)), resisting arrest (count 2/Pen. Code, § 148, subd. (a)(1)), driving under the influence (count 3/Veh. Code, § 23152, subd. (a)), and being under the influence of a controlled substance (count 4/Health & Saf. Code, § 11550, subd. (a)). In a separate proceeding the court found true two prior prison term enhancements (Pen. Code, § 667.5, subd. (b)).

Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we affirm.

FACTUAL AND PROCEDURAL HISTORY

On November 6, 2011, at approximately 11:13 p.m., California Highway Patrol Officer Jeff Morgan was stopped in his patrol car facing west on the center divider of Highway 198 in Visalia when he saw a pickup approaching from the rear at approximately 85 miles per hour. Officer Morgan accelerated behind the truck and followed it a short distance as it drove off the highway at the Akers off-ramp and turned right. Morgan activated his lights as he turned right onto Akers and the truck accelerated away at 80 miles per hour in an area where the speed limit was 45 miles per hour. At Goshen Avenue the truck made a wide left turn and accelerated westbound to approximately 100 miles an hour in an area where the speed limit was 55 miles per hour. At Shirk Avenue the truck failed to stop for a red light. At Plaza Drive the truck failed to stop for another red light. The truck then got on a northbound on-ramp to Highway 99 and resumed traveling at 100 miles an hour.

When a sheriff's deputy in front of the truck attempted to prevent it from passing, the truck passed the deputy's car by driving in the center median and then resumed traveling at a speed of 90 to 100 miles per hour. The truck eventually took the exit at Kamm Avenue where it went out of control and down the embankment of the off-ramp.

Officer Morgan stopped his patrol car, looked over the embankment and saw a man he identified in court as Her running down 15 to 20 feet from the left front of the truck and Sergio Renteria standing outside the passenger's side of the truck.¹ Officer Morgan and Officer Rickman ran after Her and took him into custody. After placing Her in a patrol car, Officer Morgan noticed Her's speech was slurred and his eyes were red and watery. Her also seemed nervous and would swing back and forth. At the highway patrol station, a breathalyzer test on Her was negative for alcohol. However, a blood sample from Her disclosed that he had 20 nanograms of amphetamine per milliliter of blood and 351 nanograms of methamphetamine per milliliter of blood in his system.

Jennifer Kearney testified as an expert that based on the amount of methamphetamine in Her's system, the symptoms he exhibited, and his driving pattern, Her was under the influence of methamphetamine to the extent that it impaired his ability to drive.

On March 9, 2012, the district attorney filed an information charging Her with the charges he was convicted of and the enhancements the court found true.

On June 26, 2012, a jury trial in this matter began. At the conclusion of the prosecution case the defense made a motion for acquittal, which the court denied. The defense then rested without providing any evidence. Later that day the jury convicted Her on all counts. Following a bench trial, the court found true the two prior prison term enhancements.

On July 25, 2012, the court sentenced Her to an aggregate five-year term, the aggravated term of three years on his evading a peace officer conviction, two one-year

¹ Although Officer Morgan did not actually see Her seated in the driver's seat of the truck, another officer testified that he saw Her get out of the truck through the driver's door. A second officer testified that he saw Renteria seated in the passenger's seat of the truck and then exiting the truck through the passenger's door.

prior prison term enhancements, 180 days on Her's conviction for driving under the influence, with credit for time served, and no time on the two remaining counts.

Her'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 record. (*People v. Wende, supra*, 25 Cal.3d 436.) Her has not responded to this court's invitation to submit additional briefing. However, our review of the record disclosed that Her's abstract of judgment contains two errors that we will direct the trial court to correct. First, the abstract lists the two prior prison term enhancements in section 2 which is intended for listing "ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS[.]" These enhancements should have been listed in section 3 which is intended for listing "ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTIONS OR PRISON TERMS[.]" Second, although the court imposed a one-year prison term for each enhancement as provided by statute (Pen. Code, § 667.5, subd. (b)), the abstract erroneously indicates that the court imposed a two-year term on one enhancement and stayed the term imposed on the second enhancement.

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

DISPOSITION

The trial court is directed to prepare an amended abstract of judgment that corrects the errors noted above and to forward a certified copy to the Department of Corrections and Rehabilitation. In all other respects the judgment is affirmed.