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

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID JOE PATLAN,

Defendant and Appellant.

F071080

(Super. Ct. Nos. F13901697 &  
F13904278)

**OPINION**

**THE COURT**\*

APPEAL from a judgment of the Superior Court of Fresno County. Jonathan M. Skiles, Judge.

Rachel Varnell, 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 Levy, Acting P.J., Detjen, J. and Peña, J.

In case No. F13901697, appellant David Joe Patlan pled no contest to possession of a firearm by a felon (count 1/Pen. Code, § 29800, subd. (a)(1)),<sup>1</sup> and possession of ammunition by a person prohibited from owning a firearm (count 2/§ 30305, subd. (a)). In case No. F13904278, Patlan pled no contest to possession for sale of a controlled substance (count 1/Health & Saf. Code, 11378), and resisting arrest (count 2/§ 148, subd. (a)(1)). In each case, Patlan also admitted a prior prison term enhancement (§ 667.5) and allegations that he had a prior conviction within the meaning of the Three Strikes law (§ 667, subds. (b)-(i)). Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we affirm.

### **FACTUAL AND PROCEDURAL HISTORY**

On June 26, 2011, at approximately 7:17 p.m., Fresno County Sheriff's deputies approached Patlan as he walked to the driver's door of his vehicle. As Patlan bent down, a deputy heard an object hit the ground followed by a "skidding" sound. The deputy then saw a plastic bag with six smaller bags inside slide past the passenger's side of the vehicle. Patlan was detained while a deputy retrieved the larger bag and discovered that the smaller bags contained a white substance that was later determined to be methamphetamine, with a total weight of 10.5 grams. Patlan was arrested. During a search of his person, deputies found a digital scale in one of the front pockets of the shorts Patlan was wearing. As a deputy began walking Patlan to a patrol car, Patlan broke free from the deputy's grasp and ran away. Patlan was eventually located hiding in a residential garage (case No. F13904278).

On February 8, 2013, Fresno police officers were dispatched to the residence of Patlan's ex-girlfriend regarding a report of a possible disturbance and a man with a gun, where they contacted Patlan and his ex-girlfriend. Patlan's ex-girlfriend told the officers

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<sup>1</sup> All further statutory references are to the Penal Code, unless otherwise indicated.

that Patlan had stopped at her residence and after seeing marks on her neck, began questioning her about them. Patlan also showed her a gun in his waistband and asked her to call her boyfriend to come over, which prompted her to text a friend to call the police. During a search of a bedroom, the officers found a fully loaded .38-caliber revolver with the hammer cocked back, located between the mattress and the box spring of a bed. Patlan's ex-girlfriend told the officers the revolver belonged to Patlan and that when they knocked on the door, Patlan told her not to open it and then he hid the revolver under the mattress (case No. F13901697).

On February 20, 2013, in case No. F13901697, the district attorney filed a complaint that charged Patlan with possession of a firearm by a felon and possession of ammunition by a person prohibited from possessing a firearm, a prior prison term enhancement and allegations that he had a prior conviction within the meaning of the Three Strikes law.

On December 13, 2015, in case No. F13904278, the district attorney filed a first amended information that charged Patlan with possession for sale of methamphetamine and resisting arrest and with the same prior prison term enhancement and Three Strikes allegations as the complaint in case No. F13901697.

On January 14, 2015, Patlan entered into a plea bargain which provided that Patlan would plead no contest to the substantive counts in each case and admit the duplicative prior prison term enhancement and prior strike allegations alleged in each case. In exchange for his plea, the court would strike two unrelated misdemeanor cases, strike the duplicative prior prison term enhancement and prior strike allegations, and in each case it would sentence him to a term of three years that would run concurrent to each other. After the court took Patlan's plea in the two cases, the prosecutor dismissed the two misdemeanor cases.

On February 11, 2015, the court struck the duplicative prior prison term enhancement and prior strike allegations and in case No. F13901697 sentenced him to

prison for the aggravated term of three years on his felon in possession of a firearm conviction, and a concurrent term of two years on his possession of ammunition conviction. In case No. 13904278, the court sentenced Patlan to prison for the aggravated term of three years on his possession for sale of narcotics conviction, which it ran concurrent to the sentence imposed in case No. 13091697.

On February 25, 2015, Patlan filed an appeal in this matter that challenged the validity of his plea and requested the trial court to issue a certificate of probable cause. On March 2, 2015, the trial court denied his request.

Patlan'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.) However, in a document filed on September 29, 2015, Patlan contends that the "the prima facie evidence contained in the People's complaint clearly exhibits tainted evidence" because: (1) there were unspecified breaches in the chain of custody and in the methods of collection of the narcotics evidence; (2) there was a lack of photo verification of weight and field testing; and (3) less than half of the substance collected was presented in court. He further contends that his defense counsel provided ineffective representation due to her failure to investigate these matters and to pursue pretrial remedies to deal with these issues, and by misrepresenting facts regarding the sentence he faced. Patlan also contends that his defense counsel now has a factual conflict with him because he filed a complaint against defense counsel and the Fresno County Public Defender's Office with the State Bar of California.

Section 1237.5 provides in relevant part: "No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere ... except where both of the following are met: [¶] (a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings.

[¶] (b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court.”

Because Patlan did not obtain a certificate of probable cause from the trial court, the issues he raises are not cognizable on appeal.

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

**DISPOSITION**

The judgment is affirmed.