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

THE PEOPLE,

Plaintiff and Respondent,

v.

PETE JARAMILLO REYNA,

Defendant and Appellant.

F071489

(Super. Ct. No. 14CMS2971)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kings County. Robert S. Burns, Judge.

Francine R. Tone, 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 Kane, Acting P.J., Detjen, J. and Franson, J.

## **INTRODUCTION**

Appellant Pete Jaramillo Reyna pled guilty to one count of reckless driving with injury, a violation of Vehicle Code section 23105, subdivision (a); admitted three prison priors within the meaning of Penal Code<sup>1</sup> section 667.5, subdivision (b); and admitted that one prior conviction constituted a strike offense within the meaning of sections 667 and 1170.12. In exchange for his plea, other counts were dismissed. Reyna appealed from his sentence and appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436. We affirm.

## **FACTUAL AND PROCEDURAL SUMMARY**

On September 13, 2014, Reyna was arguing with his girlfriend. Reyna went to his car and climbed into the driver's seat; the girlfriend went around to the passenger side. As Reyna drove away, he grabbed the girlfriend's arm and dragged her alongside the car as he drove for about 10 to 15 feet, after which he let go of her arm and she fell to the ground. The girlfriend was taken to the hospital, where she was treated for injuries to her arms and legs.

Reyna was charged with one count of kidnapping (§ 207, subd. (a)); one count of assault with force likely to result in great bodily injury (§ 245, subd. (a)(4)); one count of willful infliction of corporal injury (§ 273.5, subd. (a)); one count of false imprisonment (§ 236); and one count of reckless driving with injury (Veh. Code § 23105, sub. (a)). It also was alleged that Reyna had three prison priors and that one of the prison priors was for a strike offense.

On February 26, 2015, Reyna pled to the reckless driving count; admitted three prison priors arising from a 1999 first degree burglary conviction, a 2002 petty theft with a prior conviction, and a 2008 second degree burglary conviction; and admitted that the 1999 conviction constituted a strike conviction.

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<sup>1</sup> References to code sections are to the Penal Code unless otherwise specified.

On March 17, 2015, Reyna filed a motion requesting the trial court exercise its discretion under section 1385 and *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, to strike the 1999 prior conviction.

The probation report recommended that Reyna be sentenced to the midterm of two years for the reckless driving offense, doubled to four years for the strike prior, plus one year for each of the three prison priors, for a total term of seven years.

At the April 9, 2015, sentencing hearing, the trial court denied Reyna's motion. The trial court then proceeded to impose for the reckless driving offense the low term of 16 months, doubled to 32 months because of the 1999 strike offense, plus a one-year term for each of the three prison priors resulting from the 1999, 2002, and 2008 convictions; for a total term of five years eight months. Credits were awarded and various fines and fees imposed.

At the sentencing hearing, Reyna objected to the use of the 1999 prior conviction to both double his sentence pursuant to section 667 and to add an additional one-year term pursuant to section 667.5. The trial court responded that its reading of the law was that the use of the strike prior to double the sentence under section 667 was a sentencing scheme, and the use of the 1999 conviction to impose a prison prior was an enhancement, and that both were permissible. The trial court additionally noted that Reyna had preserved the issue for appeal.

The abstract of judgment filed April 21, 2015, accurately reflects the sentence imposed by the trial court.

On April 27, 2015, Reyna timely filed a notice of appeal. He did not seek a certificate of probable cause. The notice of appeal specifies that the appeal is based on the sentence or other matters that do not affect the plea.

## **DISCUSSION**

Appellate counsel was appointed on July 15, 2015. Appellate counsel filed a brief pursuant to *People v. Wende, supra*, 25 Cal.3d 436 on October 1, 2015. That same day, this court issued its letter to Reyna inviting him to submit a supplemental brief. No supplemental brief was filed.

At sentencing, Reyna objected to the use of the 1999 prior conviction to both double his sentence pursuant to section 667 and to add an additional one-year term pursuant to section 667.5.

It is well settled that use of the same prior conviction to both double the sentence for the underlying offense pursuant to section 667, and to impose a one-year enhancement pursuant to section 667.5, is permissible. The trial court was correct; section 667 is not an enhancement, it is an alternate sentencing scheme. (*People v. White Eagle* (1996) 48 Cal.App.4th 1511, 1517–1518.) The same conviction may be used under the three strikes sentencing scheme and as a prior prison term enhancement. (*Id.* at pp. 1519–1520; *People v. Cressy* (1996) 47 Cal.App.4th 981, 989–993.)

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

## **DISPOSITION**

The judgment is affirmed.