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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RICARDO DELATORRE,

Defendant and Appellant.

G045309

(Super. Ct. No. 09WF0339)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Craig Robison, Judge. Affirmed.

Christian C. Buckley, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Defendant Ricardo Delatorre was charged by information with one count each of : (1) felon carrying a concealed firearm (Pen. Code, § 12025, subds. (a)(2), (b)(1); count 1)<sup>1</sup>; (2) felon carrying a loaded firearm in public (§ 12031, subds. (a)(1), (a)(2)(A); count 2); (3) felon in possession of a firearm (§ 12021, subd. (a)(1); count 3); (4) providing false information to a police officer (§ 529, subd. (3); count 4); (5) possession of a hypodermic needle (Bus. & Prof. Code, former § 4140; count 5); and (6) street terrorism (§ 186.22, subd. (a); count 6).<sup>2</sup> The People further alleged that defendant committed counts 1, 2, and 3 for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)), had suffered 10 serious and violent felony convictions (strikes) (§§ 667, subds. (d), (e)(2), 1170.12, subds. (b), (c)(2)(A)), two serious felonies (§ 667, subd. (a)(1)), and three prison priors (§ 667.5, subd. (b)).

The court denied defendant's suppression motion under section 1538.5, and also denied his section 995 motion to set aside the information, except for count 4 (providing false information to police officer), which the People conceded should be dismissed.

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

<sup>2</sup> Effective January 1, 2012, the statutes defining the firearm offenses charged against defendant have been repealed and reenacted without substantive change, but with different statutory designations, as follows: former section 12025, subdivisions (a)(2) and (b)(1) is now section 25400, subdivisions (a)(2) and (c)(1); former section 12031, subdivisions (a)(1) and (a)(2)(A) is now section 25850, subdivision (a) and (c)(1); former section 12021, subdivision (a)(1) is now section 29800, subdivision (a)(1). Further, with an operative date of October 1, 2011, section 529, subdivision (3) is now designated section 529, subdivision (a)(3). Finally, Business & Professions Code section 4140 was repealed, effective January 1, 2012.

While the matter was trailing for trial, and facing a prison exposure of 61 years to life, defendant entered into a plea bargain pursuant to the court's indicated sentence. Defendant pleaded guilty to all counts, enhancements, and prior offenses upon the understanding the court would sentence him to an indicated sentence of 20 years 4 months in state prison, with total presentence custody credits of 1,660 days. The court imposed the sentence as it had indicated. An additional consecutive sentence of 16 months, with total custody credits of 423 days, was imposed on another case pending against defendant (case No. 07WF1311) for a total term of 21 years 8 months on the two cases.

Defendant timely filed a notice of appeal, and we appointed counsel to represent him. Counsel did not argue against defendant, but advised the court he was unable to find an issue to argue on defendant's behalf. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was given 30 days to file written argument in his own behalf, and he has done so.

*Defendant Waived His Appellate Rights Except any Challenge to the Lawfulness of His Sentence*

Defendant signed and initialed the *Tahl*<sup>3</sup> form waiving his rights, inter alia, to a trial by jury, to confront and cross-examine witnesses, to subpoena witnesses for his defense, to testify in his own behalf, and his privilege against self-incrimination. As the factual basis for his plea, defendant stated: "In Orange County, California, on 1/30/09 I willfully and unlawfully possessed a concealed, loaded firearm in public while being a convicted felon. On same day I was an active participant and member of 17th street, a criminal street gang with knowledge that its members have engaged in a pattern of criminal gang activity and did promote felony criminal conduct by gang members. I also committed the above felonies for the benefit of 17th street gang and with the specific

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<sup>3</sup> *In re Tahl* (1969) 1 Cal.3d 122.

intent to promote criminal conduct by gang members. I also possessed a hypodermic syringe without a prescription.” Defendant also signed and initialed a form admitting all of the charged enhancements and prior convictions.

Importantly for present purposes, defendant also waived his appellate rights by initialing the following statement: “I understand I have the right to appeal from decisions and orders of the Superior court. I waive and give up my right to appeal from any and all decisions and orders made in my case, including motions to suppress evidence pursuant to Penal Code section 1538.5. I waive and give up my right to appeal from my guilty plea. I waive and give up my right to appeal from any legally authorized sentence the court imposes which is within the terms and limits of this plea agreement.”

To assist this court in conducting its independent review, and pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel suggested we consider whether defendant’s section 1538.5 motion to suppress evidence was improperly denied. We decline to do so. Defendant expressly waived his right to contest the denial of his suppression motion. “Just as a defendant may affirmatively waive constitutional rights to a jury trial, to confront and cross-examine witnesses, to the privilege against self-incrimination, and to counsel as a consequence of a negotiated plea agreement, so also may a defendant waive the right to appeal as part of the agreement.” (*People v. Panizzon* (1996) 13 Cal.4th 68, 80.) The waiver of appellate rights may include, as here, the right to appeal from the denial of a section 1538.5 suppression motion. (*People v. Castrillon* (1991) 227 Cal.App.3d 718, 722.)

Defendant attested orally before the court and in the written *Tahl* form that he was pleading guilty freely and voluntarily. The *Tahl* form clearly explained that defendant was waiving his right to appeal the denial of his suppression motion. Moreover, the record demonstrates it was a knowing waiver. After defendant had signed the *Tahl* form, and before he pleaded guilty, his lawyer advised the court: “My client wanted to be certain that I had let the court know that he was hoping to preserve his right to appeal on this matter. [¶] I advised as part of the plea bargain that he is required to waive his right to appeal. And he has initialed that line there indicating he is waiving his right to appeal; but he just wanted to be sure that I had mentioned to the court that we had talked about that.” The court responded: “He did bring it up. [¶] And I told him that I wanted the case to be resolved today, Mr. Delatorre, one way, or the other. [¶] And if it was my offer, it would include a waiver of your right to appeal, so it doesn’t come bouncing back to me in two years and we end up in the same place we are today. [¶] Okay?” Defendant responded, “Okay.”

The court imposed the sentence exactly as indicated on the *Tahl* form. The sentence was lawful. The court exercised its discretion under section 1385 to strike nine of defendant’s 10 prior strike convictions, imposed a six-year term on count 1 (double the upper term of 3 years), imposed a two-year consecutive term for the gang enhancement on count 1 (the low term), imposed a consecutive 16 month term on count 6 (one-third the mid-term of 24 months doubled), imposed five-year terms on each of the section 667, subdivision (a)(1) serious prior convictions, and a one-year term for one of the section 667.5, subdivision (b) prison priors. Imposition of sentence on two of the prison priors was stayed, as was sentence on counts 2 and 3 pursuant to section 654, as were the gang enhancements on those counts. The sentence on count 5 was suspended.

In his supplemental brief, defendant contends that he is innocent, that the traffic stop that led to his arrest was a pretext, “the cops lied about the whole incident,” and that before he entered his guilty plea, his lawyer advised him that he would be able to

appeal the denial of his section 1538.5 and 995 motions. On this record, there is no evidence to substantiate any of these claims.

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

FYBEL, J.