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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

GABRIEL MANTILLA ESQUILIN,

Defendant and Appellant.

H037651

(Santa Clara County

Super. Ct. No. C1107294)

Defendant Gabriel Mantilla Esquilin has been required to register as a sex offender under Penal Code section 290 since 1994. He was in prison from 1994 to 2006. In December 2009, he registered a San Jose apartment as his address. In September 2010, police officers conducting a compliance check on him went to that address where they made contact with defendant's brother. He told them that defendant had moved out from that address in July 2010. Defendant had not notified law enforcement of any change of address nor did he thereafter. In April 2011, the police learned that defendant's vehicle was registered at an apartment in Mountain View where he was living with his wife and child. Defendant had leased the Mountain View apartment in May 2010.

He was arrested in May 2011 and charged by information with failing to inform law enforcement of a change of address (Pen. Code, § 290.13, subd. (a)), and it was further alleged that he had suffered four prior strike convictions (Pen. Code, §§ 667, subds. (b)-(i), 1170.12) and served a prison term for a prior felony conviction (Pen. Code,

§ 667.5, subd. (b)). He entered an unconditional no contest plea to the substantive count and admitted the strike and prison prior allegations.

Defendant thereafter asked the court to exercise its discretion to strike his strikes. Defendant was 47 years old at the time of sentencing. The strike convictions arose from defendant's repeated molestation of his girlfriend's young daughter over a three-year period.

Defendant told the probation officer that he had "70% moved" to his wife's Mountain View apartment in July 2010 but had been "distracted" and failed to update his registered address. He also stated that he believed that, because he had previously informed his parole officer of his new address, he had satisfied his registration requirement even though he was discharged from parole in June 2010.

The court struck three of the four strikes and struck the prison prior. Defendant was sentenced to the doubled midterm of six years in state prison. He timely filed a notice of appeal challenging only his sentence.

Appointed appellate counsel has filed an opening brief which states the case and the facts but raises no issues. Defendant was notified of his right to submit written argument on his own behalf, and he has done so.

He appears to challenge the sufficiency of the evidence to support his conviction. Because he pleaded no contest, such a challenge is precluded. "By admitting guilt a defendant waives an appellate challenge to the sufficiency of the evidence of guilt." (*People v. Voit* (2011) 200 Cal.App.4th 1353, 1364.)

Defendant complains that his trial counsel did not adequately represent him at the hearing on his request to strike the strikes. When a defendant presents on appeal a claim of ineffective assistance of counsel, he must prove that counsel's performance was deficient and that his defense was prejudiced by those deficiencies. (*People v. Ledesma* (1987) 43 Cal.3d 171, 218; *Strickland v. Washington* (1984) 466 U.S. 668, 687.) "The defendant must show that there is a reasonable probability that, but for counsel's

unprofessional errors, the result of the proceeding would have been different.” (*Strickland*, at p. 694.) Defendant’s trial counsel presented both written and oral argument in support of the request, and the record contains no indication that any viable arguments were excluded from trial counsel’s presentation. Nor does the record reflect that there was a reasonable probability that trial counsel could have achieved any greater success than the very favorable result he did achieve in convincing the trial court to strike three of defendant’s four strikes.

Finally, defendant maintains that his six-year prison sentence is cruel and unusual punishment. The record affords us no foundation upon which we could premise such a finding. Defendant admitted that he had willfully failed to notify the police of his change of address even though he had been living at the new address for at least ten months. During the few years since his release from prison, he violated his parole and was returned to custody. The current offense occurred shortly after he was discharged from parole. Defendant acknowledged that he knew he was not permitted to live in the Mountain View apartment due to its proximity to a school. (Pen. Code, § 3003.5, subd. (b).) Defendant’s conduct reflects that he is not willing to conform his conduct to the law’s requirements. On the limited record before us, the imposition of a six-year prison term does not appear to be cruel or unusual.

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we have reviewed the entire record and have concluded that there are no arguable issues on appeal.

The judgment is affirmed.

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Mihara, J.

WE CONCUR:

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Bamattre-Manoukian, Acting P. J.

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Duffy, J.\*

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\* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.