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

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEJANDRO GILBERT GUTIERREZ,

Defendant and Appellant.

H041344

(Santa Clara County

Super. Ct. No. C1245740)

Defendant Alejandro Gilbert Gutierrez was charged by felony complaint with two counts of possession of a firearm by a felon (Pen. Code, § 29800, subd. (a)(1)),¹ possession of ammunition (§ 30305, subd. (a)(1)), receiving stolen property (§ 496, subd. (a)), and possession of a firearm with identification numbers removed (§ 23920). It was alleged that defendant committed the offenses for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(A)). It was also alleged that defendant had two prior strike convictions (§§ 667, subs. (b)-(i), 1170.12), one prior serious felony conviction (§ 667, subd. (a)), and one prior prison term (§ 667.5, subd. (b)).

Following the advisement and waiver of his rights, defendant pleaded no contest to one count of possession of a firearm by a felon. Defendant also admitted the gang enhancement and that he had two prior strike convictions and one prior serious felony

¹ All further statutory references are to the Penal Code.

conviction. Following a *Romero*² hearing, the trial court struck one of defendant's prior strike convictions. The trial court sentenced defendant to nine years in state prison. Defendant filed a timely notice of appeal.

I. Statement of Facts

A. Present Offenses

The San Jose Police Department conducted a surveillance of an apartment after a complaint of drug activity. Defendant and codefendant Victor Sanchez-Silva, a known gang member, were observed entering and exiting the apartment with a key. A few days later, defendant was seen exiting the apartment with two boxes and driving away. Defendant was detained and the car was searched. Officers found boxes containing antique silverware, which they believed were stolen. Defendant was arrested for a parole violation. Shortly thereafter, Sanchez-Silva was arrested at the residence for being under the influence of a stimulant. Officers, who used a key provided by defendant, then searched the apartment and found a digital scale with traces of methamphetamine, three firearms, and several items of stolen property. The officers also found several items indicating that defendant was staying in the apartment: photographs of him with a woman; a wallet in the bedroom with his CDC card; and men's clothing. There was a shrine to "Santa Muerte," the patron saint of drug traffickers and gang members, and a blue rag on top of a lamp in the bedroom where defendant's wallet was found.

When defendant was arrested, he was on parole for convictions of voluntary manslaughter (§ 192) and assault with a deadly weapon (§ 245, subd. (a)(1)). The prior convictions arose from an attack by defendant and four others, all known to associate with the Varrio Sureno Town gang. The victim and his cousin, who were wearing gang clothing, were pursued by defendant and the others. Defendant stabbed the victim, who

² *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

died from his wounds. After pleading to the charges, defendant was sentenced to 16 years in state prison.

B. *Romero* Hearing

Defendant submitted evidence that he had renounced his gang affiliation and was in the process of having his gang-related tattoos removed when he was arrested. He also submitted letters from a clergyman, his father-in-law, the mother of his two-year-old daughter, and others. Defendant's two sisters and a friend testified. There was evidence that defendant had been employed and supported his family, and made efforts to distance himself from the gang.

II. Discussion

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, but he has failed to avail himself of the opportunity. 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.

III. Disposition

The judgment is affirmed.

Mihara, J.

WE CONCUR:

Bamattre-Manoukian, Acting P. J.

Márquez, J.

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