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

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE MIGUEL TAPIA,

Defendant and Appellant.

H042606

(Santa Clara County

Super. Ct. No. C1491930)

Defendant Jose Miguel Tapia was a passenger in a vehicle stopped by the police after the driver made an unsafe lane change. The police officer observed open containers of beer in the vehicle and saw that the driver was plainly under the influence of alcohol. The officer also learned that defendant and the other passenger were on probation with search conditions. A search turned up methamphetamine on defendant's person and three loaded firearms in the vehicle, none of which were registered to any of the occupants of the vehicle. One of the firearms was a semiautomatic assault weapon with a high capacity magazine. All three occupants of the vehicle were active members of the Seven Trees Norteno criminal street gang. Defendant was on probation for a conviction for felony battery, and he had also suffered a prior conviction for misdemeanor vehicle theft.

Defendant was charged by complaint with active participation in a criminal street gang (Pen. Code, § 186.22, subd. (a)),¹ possession of an assault weapon (§ 30605, subd. (a)), two counts of carrying a loaded firearm in a vehicle (§ 25850, subd. (a)), three counts of possession of a firearm by a specified misdemeanor (§ 29805), and one count of possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)). It was further alleged as to all but the participation count and the methamphetamine count that he had committed the offenses for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(A)). The complaint also alleged that the methamphetamine count had been committed while he was armed with a firearm (§ 12022, subd. (a)(1)).

Defendant entered into a plea agreement under which he pleaded no contest to the participation count and the possession of an assault weapon count, and admitted the gang enhancement allegation as to the possession count. In return for his pleas and admission, the other counts and allegations were dismissed, and it was stipulated that he would receive a two-year prison term. It was also agreed that section 654 would apply to the two counts and that they would constitute only a single strike. The plea agreement included the resolution of his probation case.

The court imposed a two-year prison term for the participation count and a two-year term for the possession count that was stayed under section 654, and it struck the punishment for the gang enhancement. It also imposed a \$300 restitution fine and other mandated fines and fees. The court dismissed the remaining counts and allegations and reinstated and terminated defendant's probation. Defendant was awarded 633 days of custody credit against his two-year prison term. 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

¹ Subsequent statutory references are to the Penal Code unless otherwise specified.

argument on his own behalf but 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.

The judgment is affirmed.

Mihara, J.

WE CONCUR:

Elia, Acting P. J.

Bamattre-Manoukian, J.