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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ROGER LEE ALLEN,

Defendant and Appellant.

B252900

(Los Angeles County
Super. Ct. No. BA413052)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Robert J. Perry, Judge. Affirmed.

Morgan H. Daly, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

California Highway Patrol officers attempted to initiate a traffic stop of Roger Lee Allen after he turned twice into oncoming traffic, nearly causing a collision. Allen moved to the correct side of the road, but ignored the officers' lights and siren. Using the patrol car's public address system, the officers ordered Allen to pull over, which he eventually did. Allen exhibited objective symptoms of intoxication and admitted he had consumed alcohol earlier. After the officers had Allen perform field sobriety tests and examined his eyes for the presence of horizontal gaze nystagmus, they arrested him for driving under the influence of alcohol. Allen refused to submit to a breath or blood test to determine the alcohol and/or drug contents of his blood, insisting he would only agree to a urine test. The officers explained the urine test was not an option. Allen continued to refuse to allow a breath or blood test to be administered to determine whether he was under the influence of alcohol or drugs.

Allen was charged in an amended information with felony driving under the influence of alcohol or drugs with an allegation he had four prior driving under the influence felony convictions within the last ten years (Veh. Code, §§ 23152, subd. (a), 23550.5, subd. (a)). It was further alleged Allen had willfully refused to submit to a chemical test (Veh. Code, §§ 23612, subd. (a)(1)(A), 23577, subd. (a)(5), 23578, 23538, subd. (b)(2)), had suffered one prior serious or violent felony conviction within the meaning of the three strikes law (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and had previously served four separate prison terms for felonies (Pen. Code, § 667.5, subd. (b)). Allen pleaded not guilty and denied the special allegations.

A jury convicted Allen as charged and found true the allegation he had willfully refused to submit to a chemical test. In a bifurcated proceeding, Allen admitted the prior conviction allegations. After dismissing the prior strike conviction (Pen. Code, § 1385), the trial court sentenced Allen to an aggregate term of seven years in state prison: the upper term of three years for driving under the influence of alcohol or drugs with a prior felony conviction for driving under the influence within the last ten years, plus four years for the one-year prior prison term enhancements. The court awarded Allen 264 days of presentence custody credit and imposed statutory fines, fees and assessments.

We appointed counsel to represent Allen on appeal. After examination of the record counsel filed an opening brief in which no issues were raised. On July 15, 2014, we advised Allen he had 30 days within which to personally submit any contentions or issues he wished us to consider. We have received no response.

We have examined the record and are satisfied Allen's appellate attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The judgment is affirmed.

WOODS, J.

We concur:

PERLUSS, P. J.

ZELON, J.