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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.

CARLOS DAVID NORIEGA,

Defendant and Appellant.

B280395

(Los Angeles County  
Super. Ct. No. VA141230)

APPEAL from a judgment of the Superior Court of Los Angeles County, Debra Cole-Hall, Judge. Affirmed.

Joseph Robert Escobosa, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Carlos David Noriega was sentenced as a second-strike offender to six years in state prison after he was convicted by a jury of firearm-possession offenses. He filed a timely notice of appeal. His court-appointed appellate counsel notified this court pursuant to *People v. Wende* (1979) 25 Cal.3d 436 he was unable to find any arguable issues to assert on appeal. We affirm the convictions.

## FACTUAL AND PROCEDURAL BACKGROUND

In March 2016, Noriega was charged in an information with one count each of carrying a loaded firearm as a felon (Pen. Code,<sup>1</sup> § 25850, subd. (a)), possessing ammunition as a felon (§ 30305, subd. (a)(1)) and possession of a firearm by a felon (§ 29800, subd. (a)(1)). The information specially alleged Noriega had suffered two prior serious or violent felony convictions within the meaning of the three strikes law (§§ 667, subds. (b)-(j), 1170.12) and had served three separate prison terms for felonies (§ 667.5, subd. (b)).

Noriega was represented by appointed counsel; his motion to replace his appointed counsel (*People v. Marsden* (1970) 2 Cal.3d 118) was heard and denied in April 2016. Noriega's motions to suppress evidence (§ 1538.5, subd. (a)(1)(A)) and for discovery of police officer personnel records (Evid. Code, §§ 1043, 1045; *Pitchess v. Superior Court* (1974) 11 Cal.3d 531) were heard and denied in September and October 2016, respectively.

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<sup>1</sup> Statutory references are to the Penal Code, unless otherwise indicated.

The jury trial commenced on October 20, 2016. According to the evidence at trial, Los Angeles County Sheriff's Deputies Bryce Loll and Jason Aguilera were in their marked patrol car on February 16, 2016, when they were dispatched to the intersection of Horst Avenue and Barnwall Street in Norwalk. There had been a report of a man with a gun and shots fired.

Upon their arrival, the deputies saw Noriega standing on the sidewalk, holding a black bag. Noriega appeared startled when he noticed the deputies and crouched behind a parked car. Deputy Loll left the patrol car, approached Noriega and, shining his flashlight, demanded that Noriega show his hands. In response, Noriega threw the black bag under the parked car and fled. The bag hit the ground, and Deputy Loll heard a metal object strike the street. Deputy Loll retrieved the bag, searched it and found a loaded semiautomatic handgun. Noriega was detained within five minutes and taken into custody.

Belinda Carranza, Noriega's girlfriend, and Noriega each testified in his defense that Carranza owned the handgun. She had packed the gun inside the black bag and had left it in the parked car with other belongings following their move from Arizona. Noriega was unaware the gun was inside the bag when Carranza asked him to go to the car.

The jury found Noriega guilty on all three counts. He admitted the prior conviction allegations in a bifurcated proceeding.

Prior to sentencing, the trial court granted Noriega's motions to dismiss one of his prior strike convictions (§ 1385; *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497) and to reclassify one of his section 667.5, subdivision (b), felony

convictions—petty theft with a prior theft-related conviction (former § 666)—as a misdemeanor under Proposition 47.

The trial court sentenced Noriega to an aggregate state prison term of six years, consisting of four years (double the two-year middle term under the three strikes law) for carrying a loaded firearm as a felon, plus two years for the prior prison term enhancements. Sentences on the remaining two counts were imposed and stayed pursuant to section 654. Noriega filed a timely notice of appeal.

## DISCUSSION

We appointed counsel to represent Noriega on appeal. After examination of the record counsel filed an opening brief in which no issues were raised. On September 8, 2017, we advised Noriega he had 30 days within which to submit any contentions or issues he wished us to consider. We have received no response.

We have examined the entire record and are satisfied Noriega'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, 118-119; *People v. Wende, supra*, 25 Cal.3d at pp. 441-442.)

## **DISPOSITION**

The judgment is affirmed.

BENSINGER, J.\*

We concur:

ZELON, Acting P. J.

SEGAL, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.