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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

RUBEN MICHAEL GARCIA,

Defendant and Appellant.

B253671

(Los Angeles County  
Super. Ct. No. VA130396)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Roger Ito, Judge. Affirmed.

Mary Bernstein, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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A jury convicted defendant and appellant Ruben M. Garcia of possession of a controlled substance, methamphetamine. (Health & Saf. Code, § 11377, subd. (a).) Garcia thereafter admitted a prior strike conviction and a prior conviction with a prison term. (Pen. Code, §§ 667, subds. (b)-(i); 1170.12, subds. (a)-(d); 667.5 subd. (b).) The trial court sentenced Garcia to state prison for an aggregate of term of four years as follows: the mid-term of two years for the drug offense, doubled to four years for the prior strike; the court struck the prior conviction with a prison term. We affirm.

### **FACTS**

On May 30, 2013, Los Angeles Sheriff's Department Deputy Ligia Escalante and her partner, Deputy Cuahtemoc Gonzalez, were on duty in their patrol car in Pico Rivera when they drove into the parking lot of a Rite-Aid store on Whittier Boulevard. Once in the parking lot, the officers approached a Ford Expedition SUV being driven by Garcia, with Hector Gomez in the front passenger seat.

The deputies stopped their patrol car near the SUV and then directed Garcia and Gomez to exit the vehicle. Deputy Gonzalez searched the SUV and found marijuana on the front passenger side of the vehicle. Gomez admitted the marijuana was his, and said that he had a "marijuana card."

Deputy Gonzalez also found and retrieved a blue jacket from the back seat of the SUV. Deputy Gonzalez showed the jacket to Garcia, and asked him if it was his. Garcia answered, "Yes, it's my work coat."<sup>1</sup> Deputy Gonzalez searched the jacket and found a green leafy substance resembling marijuana in one of the jacket's pockets. The deputy found a glass pipe and three baggies containing a crystal-like substance in another pocket. The contents of one baggie were subsequently tested; the test showed that the crystal-like substance in the baggie contained methamphetamine.

In August 2013, the People filed an information charging Garcia with one count of possession of a controlled substance, methamphetamine. (Health & Saf. Code, § 11377, subd. (a).) Further, the information alleged that Garcia suffered a prior strike conviction

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<sup>1</sup> The jacket had a printed logo on it that read "Mega Fume." Garcia was wearing a shirt with a logo that also read "Mega Fume."

for 1st degree burglary in 1997 and a prior conviction with a prison term. (Pen. Code, §§ 667, subds. (b)-(i); 1170.12, subds. (a)-(d); 667.5 subd. (b).)

The drug offense was tried to a jury in November 2013. Moments before voir dire commenced, Garcia made a *Marsden* motion.<sup>2</sup> Outside the presence of the prospective jurors and the prosecutor, the trial court listened to Garcia's concerns, and then denied the motion. At trial, the People presented evidence establishing the facts summarized above.<sup>3</sup> Garcia did not present any defense evidence; his counsel argued to the jury there was reasonable doubt as to whether Garcia was the actual possessor of the methamphetamine, suggesting that the drugs could have gotten into the SUV via Gomez. On November 21, 2013, the jury returned a verdict finding Garcia guilty as charged. As noted above, Garcia thereafter admitted the alleged prior strike conviction and a prior conviction with a prison term, and the court sentenced him as stated above.

### DISCUSSION

We appointed counsel to represent Garcia on appeal. Appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, requesting independent review of the record on appeal for arguable issues. We notified Garcia by letter that he could submit any claim, argument or issues that he wished our court to review. Garcia has not filed any claim or argument. We have independently reviewed the record on appeal, and are satisfied that appointed counsel fulfilled her duty, and that no arguable issues exist. (*People v. Wende, supra*, 25 Cal.3d 436, *People v. Kelly* (2006) 40 Cal.4th 106.)

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<sup>2</sup> *People v. Marsden* (1970) 2 Cal.3d 118.

<sup>3</sup> During trial, a juror submitted the following question: "Why search? Was this within the scope of the law?" The trial court responded to the question by instructing the jury as follows: "There are no issues in this case regarding the legality of the search. There are no issues. The sole issue here for you to decide is whether or not the defendant possessed the item, knew about the nature of the substance, and whether or not it was a usable quantity. Those are the issues for you to decide. . . ."

**DISPOSITION**

The judgment is affirmed.<sup>4</sup>

BIGELOW, P. J.

We concur:

FLIER, J.

GRIMES, J.

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<sup>4</sup> By separate order we address Garcia's petition for writ of habeas corpus.