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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

IVAN ALEXANDRO RIVAS,

Defendant and Appellant.

B286534

(Los Angeles County
Super. Ct. No. KA114249)

THE COURT:

Defendant and appellant Ivan Alexandro Rivas (appellant) appeals the judgment entered following a jury trial in which he was convicted of one count of possession of methamphetamine for sale. (Health & Saf. Code, § 11378.) Based on appellant's admissions, the court found true the allegations that appellant had suffered a prior strike conviction pursuant to Penal Code¹

¹ Undesignated statutory references are to the Penal Code.

sections 667, subdivision (d) and 1170.12, subdivision (b), and he had suffered two prior convictions pursuant to section 667.5, subdivision (b). The trial court imposed an aggregate sentence of six years, four months in state prison, consisting of the middle term of two years doubled to four years under the “Three Strikes” law, plus one year pursuant to section 667.5, subdivision (b), and a consecutive term of one year, four months for the conviction in Los Angeles Superior Court case No. KA115246.² Appellant received credit for 134 days in custody, consisting of 67 days in actual custody, and 67 days of good time/work time.

Appellant appealed the trial court’s ruling, and we appointed counsel to represent him on appeal. After examination of the record, counsel filed an opening brief raising no issues and asking this Court to independently review the record. Appellant did not file any supplemental brief of his own.

FACTUAL BACKGROUND

On December 25, 2016, around 10:20 p.m., Los Angeles County Deputy Sheriffs Zuniga and Yoshida responded to a police

² While appellant was out on bail in the instant case, he engaged in conduct that led to new criminal charges and a conviction for violating section 69 (resisting an executive officer) in Los Angeles Superior Court case No. KA115246. In that case, appellant pleaded guilty for an agreed-upon disposition of one-third the mid-term of eight months, doubled under the Three Strikes law. Appellant entered an *Arbuckle* waiver to permit the trial court in this case to impose the sentence in case No. KA115246. (*People v. Arbuckle* (1978) 22 Cal.3d 749 (*Arbuckle*); *People v. Martinez* (2005) 127 Cal.App.4th 1156, 1159 [under *Arbuckle* a plea-bargaining defendant is entitled to insist that the same court that accepted the plea also pass sentence].)

dispatch at 18244 Woodcroft Street in Azusa. There they located an older model black Honda, which matched the description given in the dispatch. The deputies pulled up behind the Honda, exited their vehicle, and approached the Honda from behind. Two people were visible in the front seat—the driver, and appellant in the passenger’s seat.

As Deputy Zuniga walked toward the passenger side, he illuminated the interior of the vehicle with his flashlight, and saw appellant holding a clear plastic baggie, which contained a white crystalline substance. Appellant appeared to be trying to conceal the bag under his right thigh. Based on his training and experience, Deputy Zuniga believed the substance in the baggie to be an illegal narcotic, specifically methamphetamine.

Before appellant could hide the baggie, Deputy Zuniga opened the passenger door, grabbed appellant, and ordered him to step out of the car. The officer immediately placed appellant in handcuffs, and confiscated the baggie. Both deputies then escorted appellant to their radio car and placed him in the back seat. Appellant asked if he was going to jail or being arrested, and what the charges were. Deputy Yoshida heard Deputy Zuniga respond that appellant was being arrested for possession of methamphetamine. At this, appellant made a spontaneous statement to the effect that the drugs were not his, and he was only selling them to support his family.

After Deputy Yoshida advised appellant of his *Miranda* rights and appellant confirmed he understood them, the deputy asked appellant to clarify his statement. Appellant explained that he did not use methamphetamine himself, and because he was unemployed, he “sold it to support his family.”

The officers searched appellant and the Honda for weapons, narcotics, and drug paraphernalia. They found none. In addition, neither officer observed any indication that appellant was under the influence of narcotics at the time of his arrest.

The baggie was found to contain 4.5967 grams of methamphetamine, a quantity sufficient for approximately 225 individual doses. According to a Los Angeles County Sheriff's Department Narcotics Bureau detective called as a prosecution expert, that amount of methamphetamine would be excessive for personal use, but is consistent with possession for sale.

The defense called no witnesses. In closing argument, defense counsel urged the jury to find appellant's possession of the methamphetamine was for his own personal use, not for sale.

DISCUSSION

We have examined the entire record and are satisfied that defendant's attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The judgment is affirmed.

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LUI, P.J.

CHAVEZ, J.

HOFFSTADT, J.