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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.

JOSE ARMANDO CARBAJAL,

Defendant and Appellant.

B280089

(Los Angeles County
Super. Ct. No. BA449884)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dennis J. Landin, Judge. Affirmed as modified.

Megan Hailey-Dunsheath, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Jose Armando Carbajal appeals from a judgment entered after a jury convicted him of feloniously driving or taking a vehicle without consent and evading a pursuing officer. We affirm the judgment as modified.

FACTUAL AND PROCEDURAL BACKGROUND

The information charged Carbajal with two felony counts, driving or taking a vehicle without consent (Veh. Code, § 10851, subd. (a)) and evading a pursuing officer (*id.*, § 2800.2), and one misdemeanor count of possession of burglar's tools (Pen. Code, § 466). The information specially alleged Carbajal had suffered one prior serious or violent felony conviction within the meaning of the three strikes law (*id.*, §§ 667, subds. (b)-(j), 1170.12) and had served two separate prison terms for felonies (*id.*, § 667.5, subd. (b)).

According to the evidence at trial, on the night of September 2, 2016, two Los Angeles Police Officers in a marked patrol car initiated a traffic stop of a pickup truck that had been reported stolen. Rather than pull over in response to the patrol car's lights and siren, the driver of the pickup truck, whom the officers identified as Carbajal, drove through three stop signs, accelerated up to 50 miles per hour, and struck a parked car in a residential neighborhood. Following the collision, Carbajal fled on foot and was soon taken into custody. His two passengers remained inside the truck.

Carbajal neither testified nor presented other evidence in his defense. In cross-examining witnesses and arguing to the jury, Carbajal's counsel maintained Carbajal was not the driver of the pickup truck.

Following the presentation of evidence, the trial court granted the defense motion to dismiss the misdemeanor count. The jury thereafter convicted Carbajal of feloniously driving or taking a vehicle without consent and evading a pursuing police officer.

In a bifurcated proceeding, Carbajal admitted the prior robbery conviction, which was specially alleged as both a prior strike and a prior prison term enhancement.¹

At sentencing, the trial court imposed concurrent terms of six years (the upper term of three years doubled under the three strikes law) on both counts.² Carbajal filed a timely notice of appeal.

DISCUSSION

We appointed counsel to represent Carbajal on appeal. After reviewing the record, counsel filed an opening brief raising no issues. On June 8, 2017, we advised Carbajal that he had 30 days to submit a brief or letter raising any grounds for appeal,

¹ Carbajal did not admit the second alleged prior prison term allegation for carrying a loaded firearm in public (Pen. Code, § 25850), and the trial court did not enhance his sentence on the basis of that allegation.

² The sentencing minute order incorrectly states the “[c]ourt selects the upper term of 6 years” for driving or taking a vehicle without consent. (See *People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2 [“[t]he record of the oral pronouncement of the court controls over the clerk’s minute order”]; *People v. Vega* (2015) 236 Cal.App.4th 484, 506 [“[w]here there is a discrepancy between the oral pronouncement of judgment and the minute order or the abstract of judgment, the oral pronouncement controls”].)

contentions, or arguments he wanted us to consider. We have received no response.

We have examined the record and are satisfied that appellate counsel for Carbajal has complied with his responsibilities and there are no arguable issues. (See *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* (1979) 25 Cal.3d 436, 441-442.)

DISPOSITION

The minute order of January 10, 2017, is ordered corrected nunc pro tunc to conform to the trial court's oral pronouncement of sentence. As modified, the judgment is affirmed. The trial court is to prepare a corrected abstract of judgment conforming to the corrected minute order and to forward a copy to the Department of Corrections and Rehabilitation.

MENETREZ, J.*

We concur:

ZELON, Acting P. J.

SEGAL, J.

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