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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

FERNANDO VALLES HERNANDEZ,

Defendant and Appellant.

F089282

(Super. Ct. No. 24CR-02825)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Merced County. Brian L. McCabe, Judge.

Laura Arnold, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Detjen, Acting P. J., Snauffer, J. and Harrell, J.

## **INTRODUCTION**

Defendant Fernando Valles Hernandez was convicted of possession of a firearm by a felon (Pen. Code,<sup>1</sup> § 29800, subd. (a)(1); count 1), unlawful possession of ammunition (§ 30305, subd. (a)(1); count 2), unlawful carrying of a loaded and unregistered handgun (§ 25850, subd. (a); count 3), and two counts of resisting, delaying, or obstructing a public officer (§ 148, subd. (a)(1); counts 4 and 5). In bifurcated proceedings, the court found true a prior strike allegation (§§ 667, subds. (b)–(i), 1170.12) and four aggravating sentencing factors (Cal. Rules of Court, rule 4.421). However, the court subsequently exercised its discretion to strike the prior strike finding (§ 1385, subd. (a)), and placed defendant on probation for five years, subject to various terms and conditions. After the notice of appeal was filed, the court modified the probation order to reflect a two-year probationary term.

Defendant’s appointed counsel asks this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised of his right to file a supplemental brief within 30 days of the date of filing of the opening brief. Defendant did not respond, and the time for doing so has passed.

We have reviewed the record and found no arguable error that would result in a disposition more favorable to defendant. Accordingly, we affirm.

## **PROCEDURAL HISTORY**

On July 3, 2024, the Merced County District Attorney filed a complaint, charging defendant with possession of a firearm by a felon (§ 29800, subd. (a)(1); count 1), unlawful possession of ammunition (§ 30305, subd. (a)(1); count 2), unlawful carrying of a loaded and unregistered handgun (§ 25850, subd. (a); count 3), and two counts of resisting, delaying, or obstructing a public officer (§ 148, subd. (a)(1); counts 4 and 5).

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

The complaint also alleged defendant had suffered a prior “strike” within the meaning of the Three Strikes Law (§§ 667, subds. (b)–(i), 1170.12), and alleged the following aggravating sentencing factors: that defendant was armed with or used a weapon during the commission of the crime, had engaged in violent conduct indicating he was a serious danger to society, had prior convictions or sustained juvenile petitions that were numerous or of increasing seriousness, had served a prior prison or jail term, was on some form of supervision when the crime was committed, and/or his prior performance on supervision was not satisfactory. (Cal. Rules of Court, rule 4.421).

After a preliminary hearing, defendant was held to answer on all charges. A subsequently filed information charged defendant with the same counts and allegations as set forth in the original complaint.

The court bifurcated trial of the prior strike allegation and aggravating factors from trial of the substantive offenses. Defendant waived his right to jury trial on those allegations.

Jury trial commenced on November 13, 2024. On November 15, 2024, the jury found defendant guilty on all counts. The court immediately proceeded with the bifurcated court trial and found true the prior strike allegation and four aggravating sentencing factors, i.e., that defendant was armed with or used a weapon during the commission of the crime, had engaged in violent conduct indicating he was a serious danger to society, had prior convictions or sustained juvenile petitions that were numerous or of increasing seriousness, had served a prior prison or jail term, and/or his prior performance on supervision was not satisfactory. The People withdrew the allegation that defendant was on supervision at the time the offense was committed.

Defendant filed a written request to dismiss the prior strike pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 and section 1385. At the sentencing hearing on January 14, 2025, the court granted the *Romero* motion and exercised its discretion pursuant to section 1385 to strike the prior strike finding. The court stated its

intent to place defendant on probation. The People asked that he be placed in a residential program as part of his probation. The court ordered defendant placed on probation for five years and ordered that he either attend a residential program or a behavioral health program. The court set a date for defendant to return to court to sign probation orders.

Defendant appeared for full probation orders on March 27, 2025. The orders executed and filed on that date reflect defendant was admitted to probation for a period of five years, subject to various terms and conditions.

Defendant appealed.

Following filing of the notice on appeal, the parties appeared before the trial court on July 10, 2025. On that date, the court granted a July 1, 2025 motion to modify probation filed by defendant and reduced the probationary term to two years.<sup>2</sup>

### **FACTUAL BACKGROUND**

#### **I. Prosecution Case**

##### **A. June 26, 2024 Incident**

On June 26, 2024, at approximately 10:30 p.m., Atwater Police Officer A. Salazar was on routine patrol in the area of Determine Drive, a known gang and high crime area. He noticed defendant riding a bicycle without front or rear lights while playing loud music, which Salazar found unusual for that area and that time of night. Salazar stopped and detained defendant for violation of Vehicle Code section 21201, subdivision (d). Salazar testified that his body worn camera was activated and operable during the stop, and video from the camera was played for the jury. Salazar asked for defendant's identification, which he provided. Salazar asked defendant to be seated, and defendant complied. Defendant denied being on probation or having any guns or weapons on his person. Defendant then stood up, making Salazar uneasy. Salazar asked him to lift his

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<sup>2</sup> The motion to modify probation is not contained in the record on appeal.

shirt; defendant refused to comply and asked why he needed to lift his shirt. At one point thereafter, defendant reached his right hand toward his right side and Salazar could not see what he was doing with his hands. Salazar drew his firearm, pointed it at defendant, and ordered him to get on the ground. Defendant got on the ground, then got back up and fled on foot.

Defendant ran through the parking lot of an apartment complex and then through the complex itself, with Salazar in pursuit. Salazar did not see a firearm in defendant's hands during the pursuit. However, at one point during the pursuit, defendant's hands were concealed toward the front of his waistband. It was dark and Salazar could not see if defendant was doing anything with his hands. Salazar did not see defendant throw anything or hear the sound of a metal object hitting the ground.

Soon after Salazar saw defendant reaching his hands toward his waistband, Salazar noticed a firearm and holster on the ground. Defendant continued to flee and eventually hopped over a fence. Salazar rushed back to secure the firearm. Ultimately, Salazar located an operable Glock 17 nine-millimeter firearm, a holster, an extra magazine, and 21 unspent rounds of ammunition, one of which was in the chamber of the firearm when it was discovered. Salazar ran the serial number on the gun and discovered it was not registered to defendant. No evidence was adduced to suggest defendant's fingerprints or DNA were found on the gun or holster.

#### **B. June 29, 2024 Incident**

On June 29, 2024, at approximately 9:00 a.m., Atwater Police Office J. Corchado was on patrol on southbound Shaffer Road with a trainee, Officer Rivera. He observed a gold Ford Expedition traveling northbound of Shaffer Road and made a U-turn to get behind it. He ran the vehicle's plate through the system and discovered it was expired. He therefore conducted a traffic stop and the vehicle came to a stop at Manzanita Drive.

Multiple occupants were in the vehicle. Corchado contacted the driver outside of the vehicle, while Rivera contacted the other occupants. The driver advised Corchado

there was another occupant in the vehicle; Corchado approached the driver's side and saw a male subject, later identified as defendant, in the back seat. As Corchado went to open the door, defendant fled through the right rear passenger door.

Corchado pursued defendant and ordered him to stop. Defendant continued running. Corchado called for additional officers to assist, and Officer A. Aguilar responded. Corchado and Aguilar jumped a fence and spoke with a homeowner. Aguilar eventually located defendant hiding in the garage of a residence on Manzanita Drive. Aguilar ordered defendant to show his hands and get on the ground; defendant did not comply and instead attempted to push the door as Aguilar entered. Aguilar pushed back, gave additional commands, and went "hands on." Once inside the garage, Aguilar was able to detain defendant.

The vehicle and defendant eventually were searched and no firearms or ammunition were located.

### **C. Exhibits**

The People admitted into evidence abstracts of judgment dated in 2011, 2017, and 2021, reflecting defendant's felony convictions from 2010, 2016, and 2021, as well as information from the Department of Justice regarding the registration of the firearm.

## **II. Defense Case**

Defendant testified in the defense case. He acknowledged that he had been convicted of "[a] few" felonies and was aware he was prohibited from possessing firearms and ammunition. He did not go to trial on his prior felonies because he was guilty and knew he would be found guilty. He decided to take this case to trial because he had been "doing good," had a job, and "no longer want[ed] to be part of that life." He was innocent and did not want to go back to prison.

In apparent reference to the June 26, 2024 incident on Determine Drive, defendant testified he was not committing a crime or doing anything wrong and was "just coming from a girlfriend's house going to another girlfriend's house." He testified he was going

to a home on Determine Drive that belonged to a woman he had been seeing for about three months. He was no longer a gang member but used to be and now was considered a gang dropout.

Defendant denied carrying a firearm that night. He explained that he refused to lift his shirt because “it’s [his] right” and he had been harassed by officers before. He told Salazar he was not on probation so Salazar would not harass him. He asserted his right to refuse a search of his person because he was not on parole or probation and was not doing anything wrong.

Defendant testified that he ran from Salazar because he saw Salazar’s gun and was scared, given that he previously was shot seven times in three different incidents. He saw Salazar’s hands shaking and saw that Salazar was nervous and he did not want to be shot by mistake. He did not recall hearing Salazar tell him to stop and he did not throw anything away while he was running. However, he did drop his wallet and identification at some point.

On cross-examination, defendant acknowledged he was incarcerated from 2021 to June 2023. He then completed and discharged a term of probation. One of his prior convictions involved possession of ammunition. His other prior convictions included possession of a dirk or dagger, resisting an officer, burglary, battery with serious bodily injury, and domestic violence. He acknowledged this incident was his first contact with Salazar.

### **DISCUSSION**

Having undertaken an independent examination of the entire record, we find no evidence of ineffective assistance of counsel or any other reasonably arguable factual or legal issues that would result in a disposition more favorable to defendant. (See *People v. Wende, supra*, 25 Cal.3d at p. 443.)

### **DISPOSITION**

The judgment is affirmed.