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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JUAN C. MUNOZ, Defendant and Appellant.	B212400 (Los Angeles County Super. Ct. No. BA337626)

APPEAL from an order of the Superior Court of Los Angeles County, Donald S. Kennedy, Commissioner. Affirmed.

Richard L. Fitzer, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

After the trial court denied his motion to suppress evidence (Pen. Code, § 1538.5), Juan C. Munoz pleaded guilty to the transportation of cocaine (Health & Saf. Code, § 11352, subd. (a)) and possession of cocaine (Health & Saf. Code, § 11350, subd. (a)). The trial court suspended imposition of sentence and granted Munoz three years probation in accordance with the provisions of Proposition 36. Munoz appealed. We affirm the trial court's order.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts*.

At approximately 4:45 p.m. on January 15, 2008, Los Angeles Police Officer Ronald Sanchez and his partner were on patrol. As Sanchez watched, a vehicle with heavily tinted windows negotiated a left-hand turn from Martin Luther King Boulevard onto Compton Avenue. As it is a violation of the Vehicle Code to drive a car with windows so heavily tinted that the tinting obstructs the driver's view (Veh. Code, § 26708), Sanchez decided to stop the vehicle.

As Sanchez and his partner approached the car, the windows rolled down and the officers immediately smelled the odor of marijuana. When Sanchez looked inside the car, he saw a marijuana cigarette sitting on the center console. Sanchez asked Munoz to step out of the car. After Munoz had done so, the officer asked Munoz if he could search him. Munoz consented to the search and, as a result, Sanchez discovered on Munoz's person a white plastic bag later determined to contain 27.64 grams of a substance containing cocaine.

2. *Procedural history*.

In a two-count information filed July 29, 2008, Munoz was charged with the transportation of cocaine in violation of Health and Safety Code section 11352, subdivision (a) and possession of cocaine in violation of Health and Safety Code section 11350, subdivision (a).

On August 18, 2008, Munoz made a motion to continue proceedings because "further investigation and preparation" was necessary to make a motion to suppress evidence. The trial court granted the motion and, on September 22, 2008, Munoz filed

notice of a motion to suppress "[a]ny alleged narcotics," "[a]ny alleged statements of the defendant or co-suspect," "[a]ny and all property seized," and "[t]he fruits of any illegally obtained evidence." In his motion, Munoz argued that "[t]he police stopped and searched [him] without any reasonable basis or justification. Therefore, the search and seizure in the instant case were conducted without a warrant, probable cause or reasonable suspicion." Following a hearing held on the matter, the trial court denied Munoz's motion to suppress evidence.

At proceedings held on November 19, 2008, Munoz decided to enter an open plea and "accept the sentence that the judge pronounce[d]." After waiving his right to a court or jury trial, the right to confront and cross-examine the witnesses against him, the right to use of the court's subpoena power to present a defense and the privilege against self-incrimination, Munoz pleaded guilty to the transportation of cocaine in violation of Health and Safety Code section 11352, subdivision (a) and possession of cocaine in violation of Health and Safety Code section 11350. Pursuant to Penal Code section 1210.1, subdivision (a), the trial court made a finding that the cocaine found on Munoz's person was being transported for his personal use and not for sale. The trial court ordered Munoz to pay a court security fee of $20 (Pen. Code, § 1465.8 subd. (a)(1)), a $50 lab fee (Health & Saf. Code, § 11372.5, subd. (a)), a $200 restitution fine (Pen. Code, § 1202.4, subd. (b)) and a stayed $200 probation revocation restitution fine (Pen. Code, § 1202.44). After it was determined that Munoz had no prior criminal record, the trial court ordered his case transferred to a different courtroom for treatment under Proposition 36.

Munoz failed to appear for a hearing scheduled for November 25, 2008 and his probation and bail were, accordingly, revoked. He did, however, appear on November 26, 2008. At that hearing, Munoz, who was represented by counsel, was placed in a Proposition 36 program. He was granted three years formal probation and directed to report to a Community Assessment Service Center officer within the following 24 hours. The officer would then refer Munoz to an appropriate treatment program. Munoz was ordered to return to court for a progress report on January 14, 2009.

On January 14, 2009, it was determined Munoz had violated the terms of his probation by testing positive for narcotics on one occasion, showing up late for drug testing on another and failing to participate in a third test. The trial court indicated it could not accept a "refus[al]," a "no-show" and a "positive test" and thus concluded "[i]t would be probation violation number one." The trial court revoked, then reinstated probation and instructed Munoz to "[s]tay with the program [to which he had been assigned] at Avalon Carver and [to not] mess up anymore." The trial court directed Munoz to report back to the court on March 16, 2009. In addition, the court converted a previous order for "[f]ines and fees" to community service.

On January 21, 2009, Munoz filed a notice of appeal "from the judgment rendered on November 26, 2008." The appeal "follow[ed] defendant's entry of [a] plea of guilty or no contest" and was "based upon the denial of a motion to suppress evidence made pursuant to Penal Code section 1538.5."

This court appointed counsel to represent Munoz on appeal on January 26, 2009.

CONTENTIONS

After examining the record, counsel for Munoz filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice filed April 27, 2009, the clerk of this court advised Munoz to submit within 30 days any contentions, grounds of appeal, or arguments he wished this court to consider. No response has been received to date.

REVIEW ON APPEAL

We have examined the entire record and are satisfied that Munoz's counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The trial court's order granting probation is affirmed.

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ALDRICH, J.

We concur:

CROSKEY, Acting P. J.

KITCHING, J.